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December 10, 1997

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**WHEN:** December 16, 1997 at 9:00 am.
**WHERE:** Office of the Federal Register
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800 North Capitol Street, NW
Washington, DC
(3 blocks north of Union Station Metro)
**RESERVATIONS:** 202–523–4538

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**Separate Parts In This Issue**



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**Reader Aids**
Additional information, including a list of telephone numbers, finding aids, reminders, and a list of Public Laws appears in the Reader Aids section at the end of this issue.

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## CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

**Federal Register**
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# Presidential Documents

**Title 3—**

## The President

**Presidential Determination No. 98–6 of December 2, 1997**

## Report to Congress Regarding Conditions in Burma and U.S. Policy Toward Burma

**Memorandum for the Secretary of State**

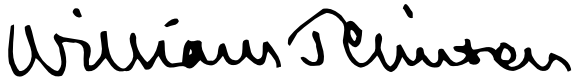
Pursuant to the requirements set forth under the heading ''Policy Toward Burma'' in section 570(d) of the FY 1997 Foreign Operations Appropriations Act, as contained in the Omnibus Consolidated Appropriations Act (Public Law 104–208), a report is required every 6 months following enactment concerning:

1) progress toward democratization in Burma;

2) progress on improving the quality of life of the Burmese people, including progress on market reforms, living standards, labor standards, use of forced labor in the tourism industry, and environmental quality; and

3) progress made in developing a comprehensive, multilateral strategy to bring democracy to and improve human rights practices and the quality of life in Burma, including the development of a dialogue between the State Law and Order Restoration Council (SLORC) and democratic opposition groups in Burma.

You are hereby authorized and directed to transmit the attached report fulfilling this requirement to the appropriate committees of the Congress and to arrange for publication of this memorandum in the **Federal Register**.



THE WHITE HOUSE,
*Washington, December 2, 1997.*

[FR Doc. 97–32476
Filed 12–9–97; 8:45 am]
Billing code 4710–10–M

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

### 7 CFR Parts 319, 320, 330, and 352

**[Docket No. 97–037–2]**

### Removal of Mexican Border Regulations

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** We are removing the regulations at 7 CFR part 320, ''Mexican Border Regulations,'' which serve to prevent the introduction into the United States of plant pests from Mexico by regulating the importation of vehicles, soil, and other materials from Mexico. The regulations at 7 CFR part 330, ''Federal Plant Pest Regulations; General; Plant Pests; Soil, Stone, and Quarry Products; Garbage,'' serve to prevent the introduction into the United States of plant pests from all foreign countries, including Mexico, by regulating the importation of plant pests themselves, as well as vehicles, soil, and other materials. The provisions in the ''Mexican Border Regulations'' to prevent the entry of plant pests from Mexico are covered in part 330. Therefore, the regulations in part 320 are unnecessary and will be removed. This action meets the President's regulatory reform goal of removing redundant Federal regulations.

**EFFECTIVE DATE:** January 9, 1998.

**FOR FURTHER INFORMATION CONTACT:** Mr. James A. Petit de Mange, Staff Officer, Phytosanitary Issues Management Team, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737–1236, (301) 734–6799.

**SUPPLEMENTARY INFORMATION:**

## Background

The regulations at 7 CFR part 320, ''Mexican Border Regulations,'' serve to prevent the entry into the United States of plant pests from Mexico by regulating the importation of vehicles, soil, and other materials from Mexico. These regulations were established to carry out the Mexican Border Act (7 U.S.C. 149), which authorizes the Secretary of Agriculture to inspect, clean, and, when necessary, disinfect railway cars, other vehicles, and materials entering the United States from Mexico.

The regulations at 7 CFR part 330, ''Federal Plant Pest Regulations; General; Plant Pests; Soil, Stone, and Quarry Products; Garbage,'' serve to prevent the dissemination of plant pests into or within the United States by regulating the movement of plant pests, means of conveyance, earth, stone and quarry products, garbage, and certain other products and articles into or through the United States. The regulations at part 330 are authorized by the Plant Quarantine Act (7 U.S.C. 151 *et seq.*) and the Federal Plant Pest Act (7 U.S.C. 150aa *et seq.*).

On August 14, 1997, we published in the **Federal Register** (62 FR 43487–43489, Docket No. 97–037–1) a proposal to remove the Mexican Border Regulations and all references to these regulations in title 7 and to correct some erroneous references to a section in 7 CFR part 319 that no longer exists. We proposed this action in accordance with the President's Regulatory Reform Initiative. We do not believe that the Mexican Border Regulations are necessary for the U.S. Department of Agriculture (USDA) to prevent the introduction of plant pests from Mexico into the United States via imported vehicles, soil, and other materials. We believe that the Mexican Border Regulations are redundant because of the existence of part 330, which regulates the importation of plant pests themselves, as well as vehicles, soil, and other materials, from any foreign country, including Mexico.

We solicited comments concerning our proposal for 60 days ending October 14, 1997. We received two comments by that date. They were from organizations representing the interests of California avocado producers. The comments are discussed below.

The commenters contend that the Mexican Border Regulations are not unnecessary and question USDA's authority to remove these regulations. The commenters state that these regulations are mandated by law. One commenter stated that it is critical for our agency to adhere to the Congressional Review of Agency Rulemaking Act of 1996, which requires Federal agencies to submit copies of final rules to Congress prior to their effective dates.

According to the Mexican Border Act, the Secretary of Agriculture is ''authorized and directed to promulgate such rules and regulations *as he may deem necessary* to regulate the entry into the United States of railway cars and other vehicles and freight, express, baggage, and other materials which may carry'' plant pests and diseases (emphasis added). The Secretary is not legally bound by the law to promulgate any regulations, much less a specific part of the Code of Federal Regulations for the exclusive purpose of administering the Mexican Border Act. However, we believe that the regulations in 7 CFR part 330 carry out the Mexican Border Act. To make this point clear, we are adding through this final rule the citation for the Mexican Border Act (7 U.S.C. 149) to the list of authority citations in part 330. As with all final rules prepared by our agency, we will submit a copy of this final rule to Congress prior to the rule's effective date.

One commenter requested that USDA reaffirm in the final rule ''that Part 330 stands as a comprehensive regulatory program directed at preventing the introduction and/or dissemination of plant pests and diseases into the United States.'' The commenter further requested that USDA reaffirm that the regulations in part 330 cover all the products (regulated vehicles, articles, and materials) currently covered by part 320.

The regulations in part 330 do not constitute a program per se. The purpose of the regulations in part 330, as stated in § 330.101, is ''to prevent the dissemination of plant pests into the United States, or interstate, by regulating the movement of plant pests into or through the United States, or interstate, and the movement of means of conveyance, earth, stone and quarry products, garbage, and certain other

products and articles. * * *'' In carrying out our mission of protecting U.S. agriculture, our agency administers these regulations through several programs. We reiterate that all of the items covered in part 320 are also covered in part 330. According to § 330.105, '' * * * all plant pests; means of conveyance and their stores; baggage; mail; plants; plant products; soil; stone and quarry products under § 330.300; garbage; *and any other product or article of any character whatsoever which an inspector considers may be infested or infected by or contain a plant pest,* arriving in the United States from any place outside thereof for entry into or movement through the United States shall be subject to inspection * * *'' (emphasis added).

The commenters questioned the timing of our proposal. They expressed particular concern because, as of November 1, Mexican avocados have been allowed to be imported into 19 northeastern States of the United States. In addition, one commenter questioned the timing of this rulemaking action because of recent incidents of food safety problems related to imported produce and the recent Presidential initiative to increase food safety inspections of fruit and vegetables overseas. The commenter also stated that the timing was inappropriate in light of the current attempt by the Administration to obtain ''fast-track'' authority for the President to negotiate new trade agreements.

Our agency has no authority in regard to food that poses threats to human health. We inspect imported agricultural products and other articles to ensure that they do not introduce foreign agricultural pests and diseases that could harm U.S. crops. Ensuring food safety is the responsibility of other Federal agencies. However, this rulemaking will have no impact on either food safety or crop protection, because it does not change any inspection procedures or authorities. In addition, the Administration's attempt to gain fast-track authority in regard to trade is a political issue outside our jurisdiction. Consequently, this rulemaking action is entirely unrelated to and has no bearing on this issue. In regard to the importation of Mexican avocados, the timing of this action is purely coincidental. However, this action will in no way change our ability to take regulatory action, should the need arise, in regard to imported Mexican avocados. We have ample authority under part 330 and other parts of title 7 to take any necessary action in the unlikely event imported Mexican avocados are found to present a threat to U.S. agriculture.

The commenters were concerned that elimination of the Mexican Border Regulations could somehow weaken U.S. quarantine security and, therefore, present a risk of avocado pest introduction. One commenter was concerned that the purpose of the Mexican Border Regulations is ''to prevent the introduction of insect pests and diseases,'' while the purpose of the Federal plant pest regulations is ''to prevent the dissemination of plant pests into the United States.'' The commenter was particularly concerned that ''dissemination in this context is something less than introduction.'' The commenter believes that the standard for prevention of plant pests is higher in the Mexican Border Regulations than in the Federal plant pest regulations.

Elimination of the Mexican Border Regulations is merely an administrative action to remove redundant Federal regulations. This action will have no effect on any regulatory activities performed by our agency to protect U.S. agriculture. We take action on imported products based on the phytosanitary risk they present. Moreover, part 320 provides neither more nor less authority than part 330 in regard to regulating articles imported from Mexico. Our treatment of regulated articles from Mexico will be the same under part 330 as it has been under part 320.

In regard to the difference between the terms ''introduction'' and ''dissemination'' as they are used, respectively, in parts 320 and 330, we believe that the intent of both usages is the same: The prevention of threats to U.S. plant health from exotic pests. However, we believe the commenter's interpretation of the level of quarantine security implied by the two words is actually reversed. Our agency considers preventing the dissemination of a pest into the United States to mean preventing *any entry* of the pest. Whereas the *NAPPO Compendium of Phytosanitary Terms* (a publication that defines terminology used by the North American Plant Protection Organization) defines introduction as ''entry and establishment of a pest'' and ''entry of a pest, resulting in establishment.''

One commenter stated that ensuring quarantine security should be USDA's overriding goal and that this goal should not be ''sacrificed'' to facilitate trade. The commenter further stated that the Mexican Border Regulations require ''*as a condition of entry* into the United States from Mexico all articles and materials * * * shall be subject to examination by an inspector,'' while the Federal plant pest regulations require that USDA ''employ procedures * * * which will *impose a minimum of impediment to foreign commerce*'' (emphasis added by commenter).

In fulfilling our agency's mission of protecting American agriculture, ensuring quarantine security is our primary objective. However, providing quarantine security by the least restrictive means has always been a philosophical tenet of our agency and is consistent with the sanitary and phytosanitary principles of the World Trade Organization. While few importations of agricultural products present absolutely no risk of pest or disease introduction, we would never allow the importation of any foreign product or article under circumstances that we thought would compromise phytosanitary security. In regard to the differing language used in parts 320 and 330 pertaining to inspection of imported articles, again, we believe the language in the two parts means the same thing. Moreover, the commenter did not cite relevant language from part 330. The complete sentence quoted by the commenter reads, ''The Deputy Administrator shall employ procedures to carry out this purpose which will impose a minimum of impediment to foreign commerce and travel *whenever practicable, consistent with proper precaution against plant pest dissemination*'' (emphasis added). We believe this language indicates that quarantine security is the ultimate priority and that facilitating trade and travel are secondary goals.

Therefore, based on the rationale set forth in the proposed rule and in this document, we are adopting the provisions of the proposal as a final rule with the change discussed in this document.

**Executive Order 12866 and Regulatory Flexibility Act**

This rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

The purpose of this rule is to remove redundant regulations from title 7 of the CFR. No segment of U.S. society will be affected by this regulatory action.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

**Executive Order 12372**

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

**Executive Order 12988**

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and

(3) does not require administrative proceedings before parties may file suit in court challenging this rule.

**Paperwork Reduction Act**

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

**Regulatory Reform**

This action is part of the President's Regulatory Reform Initiative, which, among other things, directs agencies to remove obsolete and unnecessary regulations and to find less burdensome ways to achieve regulatory goals.

**List of Subjects**

*7 CFR Part 319*

Bees, Coffee, Cotton, Fruits, Honey, Imports, Incorporation by reference, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

*7 CFR Part 320*

Imports, International boundaries, Mexico, Plant diseases and pests, Quarantine, Transportation.

*7 CFR Part 330*

Customs duties and inspection, Imports, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

*7 CFR Part 352*

Customs duties and inspection, Imports, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, 7 CFR, chapter III, is amended as follows:

## PART 319—FOREIGN QUARANTINE NOTICES

1. The authority citation for part 319 continues to read as follows:

**Authority:** 7 U.S.C. 150dd, 150ee, 150ff, 151–167, 450, 2803, and 2809; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.2(c).

**§ 319.8–27 [Removed]**

2. Section 319.8–27, ''Applicability of Mexican Border Regulations,'' is removed.

**§ 319.69a [Amended]**

3. In § 319.69a, paragraph (c), the reference to ''§ 319.37'16a'' is removed and a reference to ''§ 319.37–9'' is added in its place.

## PART 320—[REMOVED]

4. Under the authority of 7 U.S.C. 149 and 150ee and 21 U.S.C. 136 and 136a, 7 CFR, chapter III, is amended by removing ''PART 320—MEXICAN BORDER REGULATIONS''.

## PART 330—FEDERAL PLANT PEST REGULATIONS; GENERAL; PLANT PESTS; SOIL, STONE, AND QUARRY PRODUCTS; GARBAGE

5. The authority citation for part 330 is revised to read as follows:

**Authority:** 7 U.S.C. 147a, 149, 150bb, 150dd-150ff, 161, 162, 164a, 450, 2260; 19 U.S.C. 1306; 21 U.S.C. 111, 114a; 136 and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331 and 4332; 7 CFR 2.22, 2.80, and 371.2(c).

**§ 330.105 [Amended]**

6. In § 330.105, paragraph (a), third sentence, the reference to ''320,'' is removed.

**§ 330.300 [Amended]**

7. Section § 330.300 is amended as follows:

a. In the introductory text, by removing the reference to '', § 319.37–16a,'' in the first sentence, and by removing the entire last sentence.

b. In paragraph (a), by removing the reference to '', § 319.37–16a,'' and the words '', or part 320''.

## PART 352—PLANT QUARANTINE SAFEGUARD REGULATIONS

8. The authority citation for part 352 continues to read as follows:

**Authority:** 7 U.S.C. 149, 150bb, 150dd, 150ee, 150ff, 154, 159, 160, 162, and 2260; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.2(c).

**§ 352.1 [Amended]**

9. In § 352.1, paragraphs (b)(14), (b)(15), (b)(16), and (b)(24), the reference to ''320,'' is removed.

**§ 352.2 [Amended]**

10. In § 352.2, in paragraph (a), the first sentence, and in paragraph (b), the reference to ''320,'' is removed.

**§ 352.5 [Amended]**

11. In § 352.5, paragraph (d), the reference to ''320,'' is removed both times it appears.

**§ 352.10 [Amended]**

12. In § 352.10, the reference to ''320,'' is removed in the following places.

a. Paragraph (a), third sentence.

b. Paragraph (b)(1), sixth sentence.

c. Paragraph (b)(2), second sentence.

**§ 352.13 [Amended]**

13. In § 352.13, the reference to ''320,'' is removed.

Done in Washington, DC, this 4th day of December 1997.

**Craig A. Reed,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 97–32245 Filed 12–9–97; 8:45 am]

BILLING CODE 3410–34–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 97–NM–120–AD; Amendment 39–10238; AD 97–25–14]**

**RIN 2120–AA64**

## Airworthiness Directives; de Havilland Model DHC–8–100, –200, and –300 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain de Havilland Model DHC–8–100, –200, and –300 series airplanes, that requires repetitive inspections of certain refuel/defuel tube assemblies in the engine nacelles for fuel leakage, and corrective action, if necessary. This amendment will also require eventual modification of all tube assemblies, which will terminate the repetitive inspections. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent fuel leaks and consequent increased risk of engine fires.

**DATES:** Effective January 14, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 14, 1998.

**ADDRESSES:** The service information referenced in this AD may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station A, Montreal, Quebec H3C 3G9, Canada. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Richard Fiesel, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, New York Aircraft Certification Office, Engine and Propeller Directorate, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7504; fax (516) 256–2716.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain de Havilland Model DHC–8–100, –200, and –300 series airplanes was published in the **Federal Register** on October 6, 1997 (62 FR 52051). That action proposed to require repetitive inspections of certain refuel/defuel tube assemblies in the engine nacelles for fuel leakage, and corrective action, if necessary. It also proposed to require eventual modification of all tube assemblies, which would terminate the repetitive inspections.

### Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

### Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

### Cost Impact

The FAA estimates that 95 Model DHC–8–100, –200, and –300 series airplanes of U.S. registry will be affected by this AD.

The inspection will take approximately 6 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection required by this AD on U.S. operators is estimated to be $34,200, or $360 per airplane, per inspection cycle.

The modification (specified in Part 2 of the Accomplishment Instructions in the referenced alert service bulletin) will take approximately 15 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts will cost approximately $500. Based on these figures, the cost impact of the modification required by this AD on U.S. operators is estimated to be $133,000, or $1,400 per airplane.

The modification (specified in Part 3 of the Accomplishment Instructions in the referenced service bulletin) will take approximately 36 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts will cost approximately $1,600 per airplane. Based on these figures, the cost impact of the modification required by this AD on U.S. operators is estimated to be $357,200, or $3,760 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

### Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

**97–25–14 De Havilland, Inc.: Amendment 39–10238. Docket 97–NM–120–AD.**

*Applicability:* Model DHC–8–100, –200, and –300 series airplanes; as listed in Bombardier Alert Service Bulletin S.B. A8–28–20, Revision 'A,' dated September 10, 1996; certificated in any category.

**Note 1:** This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent fuel leaks and consequent increased risk of engine fires, accomplish the following:

(a) Within 30 days after the effective date of this AD, inspect the five refuel/defuel tube assemblies in the engine nacelles to detect fuel leaks, in accordance with Part 1 of the Accomplishment Instructions of Bombardier Alert Service Bulletin S.B. A8–28–20, Revision 'A', dated September 10, 1996. If any fuel leak is found, prior to further flight, replace the refuel/defuel tube assembly with an improved assembly, in accordance with the alert service bulletin. Thereafter, repeat the inspection at intervals not to exceed 6 months.

(b) Within 12 months after the effective date of this AD, modify the refuel/defuel tube assembly located under the exhaust fingernail on the engine nacelle, as specified in Part 2 of the Accomplishment Instructions of Bombardier Alert Service Bulletin S.B. A8–28–20, Revision 'A,' dated September 10,

1996, in accordance with the procedures specified in the alert service bulletin.

(c) Within 24 months after the effective date of this AD, modify the remaining refuel/defuel tube assemblies, as specified in Part 3 of the Accomplishment Instructions of Bombardier Alert Service Bulletin S.B. A8–28–20, Revision 'A,' dated September 10, 1996, in accordance with the procedures specified in the alert service bulletin.

(d) Accomplishment of the modifications required by paragraphs (b) and (c) of this AD constitutes terminating action for the repetitive inspections required by paragraph (a) of this AD.

(e) As of the effective date of this AD, no person shall install a refuel/defuel tube assembly having part number 82820107–007, 82821015–003, 82820108–005, 82820245–001, 82820246–001, 82820247–001, or 82821014–001, on any airplane.

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office (ACO), FAA, Engine and Propeller Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

**Note 2:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

(g) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(h) The actions shall be done in accordance with Bombardier Alert Service Bulletin S.B. A8–28–20, Revision 'A,' dated September 10, 1996. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station A, Montreal, Quebec H3C 3G9, Canada. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**Note 3:** The subject of this AD is addressed in Canadian airworthiness directive CF–96–14, dated August 20, 1996.

(i) This amendment becomes effective on January 14, 1998.

Issued in Renton, Washington, on December 2, 1997.

**Darrell M. Pederson,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 97–32118 Filed 12–9–97; 8:45 am]

BILLING CODE 4910–13–U

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 97–NM–104–AD; Amendment 39–10237; AD 97–25–13]**

**RIN 2120–AA64**

## Airworthiness Directives; British Aerospace BAe Model ATP Airplanes and Model HS 748 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain British Aerospace BAe Model ATP airplanes and all Model HS 748 series airplanes, that requires inspection of the main hydraulic accumulator for corrosion, and corrective actions, if necessary. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to detect and correct such corrosion, which could result in loss of certain hydraulic system functions, including nose wheel steering, hydraulic lowering of the landing gear, and main wheel brakes, which are essential for safe operation of the airplane.

**DATES:** Effective January 14, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 14, 1998.

**ADDRESSES:** The service information referenced in this AD may be obtained from AI(R) American Support, Inc., 13850 McLearen Road, Herndon, Virginia 20171. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain British Aerospace BAe Model ATP airplanes and all Model HS 748 series airplanes was published in the **Federal Register** on August 20, 1997 (62 FR 44244). That action proposed to require inspection of the main hydraulic accumulator for corrosion, and corrective actions, if necessary.

### Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

### Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

### Cost Impact

The FAA estimates that 10 British Aerospace BAe Model ATP airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $600, or $60 per airplane.

Currently, there are no British Aerospace Model HS 748 series airplanes on the U.S. Register. However, should an affected airplane be imported and placed on the U.S. Register in the future, it would take approximately 1 work hour per airplane to accomplish the required actions, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the AD would be $60 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

### Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44

FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

### § 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

**97–25–13 British Aerospace Regional Aircraft [Formerly Jetstream Aircraft Limited, British Aerospace (Commercial Aircraft) Limited]:** Amendment 39–10237. Docket 97–NM–104–AD.

*Applicability:* BAe Model ATP airplanes having constructor's numbers 2002 through 2063 inclusive; and all Model HS 748 series airplanes; certificated in any category.

**Note 1:** This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless accomplished previously.

To detect and correct corrosion of the cylinder tube of the main hydraulic accumulator, which could result in loss of certain hydraulic system functions that are essential for safe operation of the airplane, accomplish the following:

(a) Within 30 days after the effective date of this AD, perform an inspection of the main hydraulic accumulator for corrosion, in accordance with British Aerospace Service Bulletin ATP–29–15, or HS748–29–49, both dated February 25, 1997; as applicable. If any discrepancy is found, prior to further flight, accomplish the applicable corrective actions specified in the service bulletins.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

**Note 2:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(c) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The actions shall be done in accordance with British Aerospace Service Bulletin ATP–29–15, dated February 25, 1997, and British Aerospace Service Bulletin HS748–29–49, dated February 25, 1997. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from AI(R) American Support, Inc., 13850 Mclearen Road, Herndon, Virginia 20171. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**Note 3:** The subject of this AD is addressed in British airworthiness directives 004–02–97, dated February 25, 1997, and 005–02–97, dated February 7, 1997.

(e) This amendment becomes effective on January 14, 1998.

Issued in Renton, Washington, on December 2, 1997.

**Darrell M. Pederson,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 97–32121 Filed 12–9–97; 8:45 am]

BILLING CODE 4910–13–U

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Airspace Docket No. 97–AGL–40]**

**RIN 2120–AA66**

## Revision to Chicago Midway Airport Class C Airspace Area; Illinois

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This action amends the legal description of the Chicago Midway Airport Class C airspace area. Currently, the legal description uses the Runway 31L localizer course to define the southeast boundary of Chicago Midway's Class C airspace outer ring (that area between 5 and 10 nautical miles [NM]). Since the legal description was published, the Chicago Midway Airport added another runway to the outside of Runway 31L, making the old Runway 31L the new Runway 31C. To keep the Class C airspace area boundaries unchanged, a correction to the legal description must be made. This action will make the necessary correction by changing ''Chicago Midway 31L localizer course'' to read ''Chicago Midway 31C localizer course.''

**EFFECTIVE DATE:** 0901 UTC, February 26, 1998.

**FOR FURTHER INFORMATION CONTACT:** Steve Brown, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

**SUPPLEMENTARY INFORMATION:**

### The Rule

This action amends 14 CFR part 71 by changing the legal description of the Chicago Midway Airport Class C airspace area. Currently, the legal description uses the Runway 31L localizer course to define the southeast boundary of the Chicago Midway Class C airspace outer ring (that area between 5 and 10 NM). Since the description was published, Chicago Midway Airport added another runway to the outside of Runway 31L, making the old Runway 31L the new Runway 31C. To keep the Class C airspace area boundaries unchanged, a correction to the legal description must be made. This action will make the necessary correction by changing ''Chicago Midway 31L localizer course'' to read ''Chicago Midway 31C localizer course.''

Since this action merely involves changes in the legal description of the Chicago Midway Class C airspace area and does not involve a change in the dimensions or operating requirements of that airspace, notice and public procedure under 5 U.S.C. 553(b) are unnecessary.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current.

It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Class C airspace areas are published in paragraph 4000 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class C airspace area listed in this document will be published subsequently in the Order.

**List of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (air).

**Adoption of the Amendment**

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

## PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

**§ 71.1 [Amended]**

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

*Paragraph 4000—Subpart C—Class C Airspace*

* * * * *

**AGL IL C Chicago Midway Airport, IL [Revised]**

Chicago Midway Airport, IL
Chicago Midway Airport, IL
(lat. 41°47′10″N., long. 87°45′08″W.)
Chicago O'Hare VOR/DME
(lat. 41°59′16″N., long. 87°54′18″W.)

That airspace within a 5-mile radius of the Chicago Midway Airport extending upward from the surface to 3,600 feet MSL; and that airspace within a 10-mile radius of the airport beginning at a line 2 miles northeast of and parallel to the Chicago Midway Runway 31C localizer course clockwise to where the 10.5-mile arc of the Chicago O'Hare VOR/DME intersects the 10-mile radius of the airport, thence via the Chicago O'Hare VOR/DME 10.5-mile arc, extending upward from 1,900 feet MSL to 3,600 feet MSL. This Class C airspace area excludes any airspace contained in the Chicago, IL, Class B airspace area.

* * * * *

Issued in Washington, DC, on December 2, 1997.

**Reginald C. Matthews,**

*Acting Program Director for Air Traffic Airspace Management.*

[FR Doc. 97–32353 Filed 12–9–97; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Airspace Docket No. 97–AGL–41]**

## Modification of the Legal Description of Class E Airspace; Hancock, MI

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This action modifies the legal description of Class E airspace at Hancock, MI. The current legal description indicates less than continuous times of operation for the Class E airspace for Houghton County Memorial Airport. Actual times of operation for the airspace are continuous. The legal description must reflect the actual times of operation. This action will accurately reflect the actual times of operation for the Class E airspace at Hancock, MI.

**EFFECTIVE DATE:** 0901 UTC, February 26, 1998.

**FOR FURTHER INFORMATION CONTACT:** Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

**SUPPLEMENTARY INFORMATION:**

**History**

On Thursday, September 11, 1997, the FAA proposed to amend 14 CFR part 71 to modify the legal description of the Class E airspace at Hancock, MI (62 FR 47777). The proposal was to change the legal description to accurately reflect the existing continuous times of operation for the airspace.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designated as a surface area are published in paragraph 6002 of FAA Order 7400.9E dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

**The Rule**

This amendment to 14 CFR part 71 modifies the legal description of the Class E airspace at Hancock, MI, by removing the statement which indicates less than continuous times of operation for the airspace. The actual times of operation for the Class E airspace at Hancock, MI, are continuous.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (air).

**Adoption of the Amendment**

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

## PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

**Authority**: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

**§ 71.1 [Amended]**

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective

September 16, 1997, is amended as follows:

*Paragraph 6002 Class E Airspace Designated as a Surface Area*

* * * * *

**AGL MI E2 Hancock, MI [Revised]**

Houghton County Memorial Airport, MI
(lat. 47°10′07″N, long. 88°29′20″W)

Within a 5.3-mile radius of Houghton County Memorial Airport.

* * * * *

Issued in Des Plaines, Illinois on November 17, 1997.

**David B. Johnson,**

*Acting Manager, Air Traffic Division.*

[FR Doc. 97–32347 Filed 12–9–97; 8:45 am]

BILLING CODE 4910–13–M

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Airspace Docket No. 97–AGL–36]**

## Modification of Class E Airspace; Coshocton, OH

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This action modifies Class E airspace at Coshocton, OH. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway 22 has been developed for Richard Downing Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. This action adds a northeast extension to the existing controlled airspace for the airport.

**EFFECTIVE DATE:** 0901 UTC, February 26, 1998.

**FOR FURTHER INFORMATION CONTACT:** Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

**SUPPLEMENTARY INFORMATION:**

### History

On Thursday, September 11, 1997, the FAA proposed to amend 14 CFR part 71 to modify the Class E airspace at Coshocton, OH (62 FR 47778). The proposal was to add controlled airspace extending upward from 700 to 1200 feet AGL to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

### The Rule

This amendment to 14 CFR part 71 modifies Class E airspace at Coshocton, OH, to accommodate aircraft executing the GPS Runway 22 SIAP at Richard Downing Airport by adding a northeast extension to the existing controlled airspace. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approach. The area will be depicted on appropriate aeronautical charts.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not at ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

### List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

### Adoption of the Amendment

In consideration of the foregoing; the Federal Aviation Administration amends 14 CFR part 71 as follows:

## PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

**§ 71.1 [Amended]**

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

*Paragraph 6005 Class E Airspace Areas Extending Upward from 700 Feet or More Above the Surface of the Earth*

* * * * *

**AGL OH E5 Coshocton, OH [Revised]**

Richard Downing Airport, OH
(lat. 40°18′33″N, long. 81°51′12″W)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of the Richard Downing Airport and within 4.9 miles either side of the 037° bearing from the airport extending from the 6.3-mile radius to 10.0 miles northeast of the airport.

* * * * *

Issued in Des Plaines, Illinois on November 12, 1997.

**David B. Johnson,**

*Assistant Manager, Air Traffic Division.*

[FR Doc. 97–32348 Filed 12–9–97; 8:45 am]

BILLING CODE 4910–13–M

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Airspace Docket No. 97–AGL–38]**

## Modification of the Legal Description of Class E Airspace; Dickinson, ND

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This action modifies the legal description of Class E airspace at Dickinson, ND. The current legal description indicates less than continuous times of operation for the Class E airspace for Dickinson Municipal Airport. Actual times of operation for the airspace are continuous. The legal description must reflect the actual times of operation. This action will accurately reflect the actual times of operation for the Class E airspace at Dickinson, ND.

**EFFECTIVE DATE:** 0901 UTC, February 26, 1998.

**FOR FURTHER INFORMATION CONTACT:** Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East

Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

**SUPPLEMENTARY INFORMATION:**

**History**

On Thursday, September 11, 1997, the FAA proposed to amend 14 CFR part 71 to modify the legal description of the Class E airspace at Dickinson, ND (62 FR 47776). The proposal was to change the legal description to accurately reflect the existing continuous times of operation for the airspace.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designated as a surface area are published in paragraph 6002 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

**The Rule**

This amendment to 14 CFR part 71 modifies the legal description of the Class E airspace at Dickinson, ND, by removing the statement which indicates less than continuous times of operation for the airspace. The actual times of operation for the Class E airspace at Dickinson, ND, are continuous.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (air).

**Adoption of the Amendment**

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

## PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

**§ 71.1 [Amended]**

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

*Paragraph 6002 Class E airspace designated as a surface area*

* * * * *

**AGL ND E2 Dickinson, ND [Revised]**

Dickinson Municipal Airport, ND
(lat. 46°47′51″N, long. 102°48′03″W)

Within a 4.4-mile radius of Dickinson Municipal Airport, and within 1.4 miles each side of the 150° bearing from the airport, extending from the 4.4-mile radius to 7 miles southeast of the airport.

* * * * *

Issued in Des Plaines, Illinois on November 17, 1997.

**David B. Johnson,**

*Acting Manager, Air Traffic Division.*

[FR Doc. 97–32351 Filed 12–9–97; 8:45 am]

**BILLING CODE 4910–13–M**

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Airspace Docket No. 97–AGL–39]**

## Modification of the Legal Description of Class E Airspace; Akron, OH

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This action modifies the legal description of Class E airspace at Akron, OH. The current legal description indicates less than continuous times of operation for the Class E airspace for Akron Fulton International Airport. Actual times of operation for the airspace are continuous. The legal description must reflect the actual times of operation. This action will accurately reflect the actual times of operation for the Class E airspace at Akron, OH.

**EFFECTIVE DATE:** 0901 UTC, February 26, 1998.

**FOR FURTHER INFORMATION CONTACT:**

Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

**SUPPLEMENTARY INFORMATION:**

**History**

On Thursday, September 11, 1997, the FAA proposed to amend 14 CFR part 71 to modify the legal description of the Class E airspace at Akron, OH (62 FR 47779). The proposal was to change the legal description to accurately reflect the existing continuous times of operation for the airspace.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designated as a surface area are published in paragraph 6002 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

**The Rule**

This amendment to 14 CFR part 71 modifies the legal description of the Class E airspace at Akron, OH, by removing the statement which indicates less than continuous times of operation for the airspace. The actual times of operation for the Class E airspace at Akron, OH, are continuous.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (air).

### Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

## PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

**§ 71.1 [Amended]**

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

*Paragraph 6002 Class E airspace designated as a surface area*

* * * * *

**AGL OH E2 Akron, OH [Revised]**

Akron Fulton International Airport, OH
(lat. 41°02′15″N, long. 81°28′01″W)

Within a 4.1-mile radius of Akron Fulton International Airport, excluding that airspace within the Akron-Canton Regional Airport, OH, Class C airspace area.

* * * * *

Issued in Des Plaines, Illinois, on November 17, 1997.

**David B. Johnson,**

*Acting Manager, Air Traffic Division.*

[FR Doc. 97–32352 Filed 12–9–97; 8:45 am]

BILLING CODE 4910–13–M

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 95

**[Docket No. 29080; Amdt. No. 406]**

## IFR Altitudes; Miscellaneous Amendments

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final Rule.

**SUMMARY:** This amendment adopts miscellaneous amendments to the required IFR (instrument flight rules) altitudes and changeover points for certain Federal airways, jet routes, or direct routes for which a minimum or maximum en route authorized IFR altitude is prescribed. This regulatory action is needed because of changes occurring in the National Airspace System. These changes are designed to provide for the safe and efficient use of the navigable airspace under instrument conditions in the affected areas.

**EFFECTIVE DATE:** 0901 UTC, January 1, 1998.

**FOR FURTHER INFORMATION CONTACT:** Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 267–8277.

**SUPPLEMENTARY INFORMATION:** This amendment to part 95 of the Federal Aviation Regulations (14 CFR part 95) amends, suspends, or revokes IFR altitudes governing the operation of all aircraft in flight over a specified route or any portion of that route, as well as the changeover points (COPs) for Federal airways, jet routes, or direct routes as prescribed in part 95.

### The Rule

The specified IFR altitudes, when used in conjunction with the prescribed changeover points for those routes, ensure navigation aid coverage that is adequate for safe flight operations and free of frequency interference. The reasons and circumstances that create the need for this amendment involve matters of flight safety and operational efficiency in the National Airspace System, are related to published aeronautical charts that are essential to the user, and provide for the safe and efficient use of the navigable airspace. In addition, those various reasons or circumstances require making this amendment effective before the next scheduled charting and publication date of the flight information to assure its timely availability to the user. The effective date of this amendment reflects those considerations. In view of the close and immediate relationship between these regulatory changes and safety in air commerce, I find that notice and public procedure before adopting this amendment are impracticable and contrary to the public interest and that good cause exists for making the amendment effective in less than 30 days. The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current.

It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reasons, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

### List of Subjects in 14 CFR Part 95

Airspace, Navigation (air).

Issued in Washington, D.C. on December 3, 1997.

**Thomas E. Stuckey,**

*Acting Director, Flight Standards Service.*

### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, part 95 of the Federal Aviation Regulations (14 CFR part 95) is amended as follows effective at 0901 UTC,

1. The authority citation for part 95 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44719, 44721.

2. Part 95 is amended to read as follows:

REVISIONS TO MINIMUM ENROUTE IFR ALTITUDES AND CHANGEOVER POINTS

[Amendment 406 Effective Date, January 1, 1998]

| From | To | MEA |
|---|---|---|
| **§ 95.1001 DIRECT ROUTES—U.S.** | | |
| **§ 95.115 AMBER FEDERAL AIRWAY 15 IS AMENDED TO DELETE** | | |
| PUT RIVER, AK NDB | OLIKTOK/DCMSND, AK NDB | 2000 |

REVISIONS TO MINIMUM ENROUTE IFR ALTITUDES AND CHANGEOVER POINTS—Continued

[Amendment 406 Effective Date, January 1, 1998]

| From | To | MEA |
|---|---|---|
| **§ 95.6001 VOR FEDERAL AIRWAY 1 IS AMENDED TO READ IN PART** | | |
| INLET, SC FIX | PLANN, SC FIX | 2400 |
| **§ 95.6007 VOR FEDERAL AIRWAY 7 IS AMENDED TO READ IN PART** | | |
| CROWD, FL FIX | LAKELAND, FL VORTAC | 2200 |
| **§ 95.6016 VOR FEDERAL AIRWAY 16 IS AMENDED TO READ IN PART** | | |
| LOS ANGELES, CA VORTAC | PARADISE, CA VORTAC | 4000 |
| **§ 95.6051 VOR FEDERAL AIRWAY 51 IS AMENDED TO READ IN PART** | | |
| PAHOKEE, FL VORTAC | *SHEDS, FL FIX | 2000 |
| **3000—MRA* | | |
| SHEDS, FL FIX | VERO BEACH, FL VORTAC | 2000 |
| **§ 95.6070 VOR FEDERAL AIRWAY 70 IS AMENDED TO READ IN PART** | | |
| EUFAULA, AL VORTAC | VIENNA, GA VORTAC | 2400 |
| **§ 95.6157 VOR FEDERAL AIRWAY 157 IS AMENDED TO READ IN PART** | | |
| LA BELLE, FL VORTAC | RINSE, FL FIX | *2000 |
| **1400—MOCA* | | |
| RINSE, FL FIX | LAKELAND, FL VORTAC | 2200 |
| **§ 95.6159 VOR FEDERAL AIRWAY 159 IS AMENDED TO READ IN PART** | | |
| VERO BEACH, FL VORTAC | *PRESK, FL FIX | 2100 |
| **2500—MRA* | | |
| PRESK, FL FIX | ORLANDO, FL VORTAC | 2100 |
| **§ 95.6295 VOR FEDERAL AIRWAY 295 IS AMENDED TO READ IN PART** | | |
| VERO BEACH, FL VORTAC | BAIRN, FL FIX | 2100 |
| **§ 95.6302 VOR FEDERAL AIRWAY 302 IS AMENDED TO READ IN PART** | | |
| AUGUSTA, ME VOR/DME | ANCOR, ME FIX | *6500 |
| **1800—MOCA* | | |
| **§ 95.6308 VOR FEDERAL AIRWAY 308 IS AMENDED TO READ IN PART** | | |
| BETHEL, AK VORTAC | FISHH, AK FIX. | |
| | E BND | *8000 |
| | W BND | *2000 |
| **1400—MOCA* | | |
| **§ 95.6319 VOR FEDERAL AIRWAY 319 IS AMENDED TO READ IN PART** | | |
| YAKUTAT, AK VORTAC | MALAS, AK FIX. | |
| | W BND | *10000 |
| | E BND | *2300 |
| **2300—MOCA* | | |
| MALAS, AK FIX | KATAT, AK FIX | #*10000 |
| **5500—MOCA* | | |
| *#MEA IS ESTABLISHED WITH A GAP IN NAVIGATION SIGNAL COVERAGE.* | | |
| CASEL, AK FIX | EYAKS, AK FIX | *5000 |
| **2500—MOCA* | | |
| EYAKS, AK FIX | JOHNSTONE POINT, AK VORTAC | *5000 |
| **4900—MOCA* | | |
| JOHNSTONE POINT, AK VORTAC | PEPPI, AK FIX. | |
| | W BND | *10000 |
| | E BND | *5000 |
| **4900—MOCA* | | |
| PEPPI, AK FIX | WILER, AK FIX. | |
| | W BND | *10000 |
| | E BND | *8000 |

REVISIONS TO MINIMUM ENROUTE IFR ALTITUDES AND CHANGEOVER POINTS—Continued

[Amendment 406 Effective Date, January 1, 1998]

| From | To | MEA |
|---|---|---|
| *8000—MOCA | | |
| YONEK, AK FIX | *TORTE, AK FIX. | |
| | W BND | **12000 |
| | E BND | **6000 |
| *8100—MCA TORTE FIX, W BND | | |
| **5000—MOCA | | |
| VEILL, AK FIX | SPARREVOHN, AK VOR/DME. | |
| | E BND | *12000 |
| | W BND | *7000 |
| *6000—MOCA | | |
| VIDDA, AK FIX | WEEKE, AK FIX. | |
| | E BND | *6000 |
| | W BND | *3000 |
| *2200—MOCA | | |
| WEEKE, AK FIX | BETHEL, AK VORTAC. | |
| | E BND | 6000 |
| | W BND | 2000 |
| BETHEL, AK VORTAC | ARSEN, AK FIX | 2000 |
| **§ 95.6325 VOR FEDERAL AIRWAY 325 IS AMENDED TO READ IN PART** | | |
| ATHENS, GA VORTAC | WOMAC, GA FIX | 3700 |
| **§ 95.6350 VOR FEDERAL AIRWAY 350 IS AMENDED TO READ IN PART** | | |
| BAFIN, AK FIX | BETHEL, AK VORTAC. | |
| | E BND | 5000 |
| | W BND | 2000 |
| BETHEL, AK VORTAC | DAHLS, AK FIX. | |
| | W BND | 3600 |
| | E BND | 2000 |
| **§ 95.6437 VOR FEDERAL AIRWAY 437 IS AMENDED TO READ IN PART** | | |
| PAHOKEE, FL VORTAC | MELBOURNE, FL VOR/DME | 2100 |
| **§ 95.6453 VOR FEDERAL AIRWAY 453 IS AMENDED TO READ IN PART** | | |
| EDUCE, AK FIX | BETHEL, AK VORTAC. | |
| | S BND | *7000 |
| | N BND | *4000 |
| *2500—MOCA | | |
| **§ 95.6480 VOR FEDERAL AIRWAY 480 IS AMENDED TO READ IN PART** | | |
| ALIEN, AK FIX | KIPNUK, AK VOR/DME. | |
| | W BND | *3000 |
| | E BND | 2000 |
| BETHEL, AK VORTAC | CABOT, AK FIX. | |
| | W BND | *2000 |
| | E BND | *4000 |
| *1400—MOCA | | |
| JOANY, AK FIX | MC GRATH, AK VORTAC. | |
| | W BND | *8000 |
| | E BND | *6000 |
| *5200—MOCA | | |
| MC GRATH, AK VORTAC | MEFRA, AK FIX. | |
| | W BND | 4000 |
| | E BND | 8000 |
| **§ 95.6495 VOR FEDERAL AIRWAY 495 IS AMENDED TO READ IN PART** | | |
| JAWBN, WA FIX | U.S. CANADIAN BORDER | #*5400 |
| *4300—MOCA | | |
| #MINIMUM TURNING ALTITUDE—ACFT PROCEEDING V495 SE—BND TURNING WEST AT JAWBN ON V4 MUST MAINTAIN AT OR ABOVE 8000 UNTIL ESTABLSIHED ON CENTERLINE OF V4 W—BND. | | |
| **§ 95.6506 VOR FEDERAL AIRWAY 506 IS AMENDED TO READ IN PART** | | |
| KODIAK, AK VORTAC | BAILY, AK FIX. | |
| | W BND | *12000 |
| | E BND | *6000 |

REVISIONS TO MINIMUM ENROUTE IFR ALTITUDES AND CHANGEOVER POINTS—Continued

[Amendment 406 Effective Date, January 1, 1998]

| From | To | MEA |
|---|---|---|
| **4900—MOCA* | | |
| BREMI, AK FIX | KING SALMON, AK VORTAC. | |
| | E BND | *12000 |
| | W BND | *5000 |
| **4400—MOCA* | | |
| CAYON, AK FIX | BETHEL, AK VORTAC. | |
| | E BND | 8000 |
| | W BND | 4000 |
| BETHEL, AK VORTAC | MARSI, AK FIX. | |
| | W BND | 8000 |
| | E BND | 2000 |
| DACIA, AK FIX | NOME, AK VORTAC. | |
| | N BND | *8000 |
| | S BND | *4000 |
| **3200—MOCA* | | |
| NOME, AK VORTAC | BAIME, AK FIX. | |
| | N BND | 7000 |
| | S BND | 6000 |
| SETUP, AK FIX | KOTZEBUE, AK VOR/DME. | |
| | S BND | 7000 |
| | N BND | 2000 |
| MEADE, AK FIX | BARROW, AK VORTAC. | |
| | S BND | *10000 |
| | N BND | *2000 |
| **1100—MOCA* | | |
| **§ 95.6511 VOR FEDERAL AIRWAY 511 IS AMENDED TO READ IN PART** | | |
| LAKELAND, FL VORTAC | HALLR, FL FIX | *4000 |
| **2200—MOCA* | | |
| **§ 95.6521 VOR FEDERAL AIRWAY 521 IS AMENDED TO READ IN PART** | | |
| QUNCY, FL FIX | LAKELAND, FL VORTAC | 2200 |
| **§ 95.6537 VOR FEDERAL AIRWAY 537 IS AMENDED TO READ IN PART** | | |
| VERO BEACH, FL VORTAC | *PRESK, FL FIX | 2100 |
| **2500—MRA* | | |

| AIRWAY SEGMENT | | CHANGEOVER POINTS | |
|---|---|---|---|
| FROM | TO | DISTANCE | FROM |
| **§ 95.8003 VOR FEDERAL AIRWAYS CHANGEOVER POINTS V–23 IS AMENDED TO DELETE** | | | |
| PAINE, WA VOR/DME | BELLINGHAM, WA VORTAC | 14 | PAINE |
| **V–51 IS AMENDED TO READ IN PART** | | | |
| NABB, IN VORTAC | SHELBYVILLE, IN VORTAC | 20 | NABB |
| **V–480 IS AMENDED BY ADDING** | | | |
| ST PAUL ISLAND, AK NDB/DME | KIPNUK, AK VOR/DME | 197 | ST PAUL ISLAND |

[FR Doc. 97–32346 Filed 12–9–97; 8:45 am]

BILLING CODE 4910–13–M

## SECURITIES AND EXCHANGE COMMISSION

### 17 CFR Part 230

### General Rules and Regulations, Securities Act of 1933

*CFR Correction*

In Title 17 of the Code of Federal Regulations, parts 200 to 239, revised as of April 1, 1997, page 445, Part 230, the authority citation for the part is corrected by removing ''78t'' and replacing it with ''79t''.

BILLING CODE 1505-01-D

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 520

### Oral Dosage Form New Animal Drugs; Lincomycin Soluble Powder

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an abbreviated new animal drug application (ANADA) filed by I. D. Russell Co. Laboratories. The ANADA provides for use of lincomycin hydrochloride soluble powder to make medicated drinking water for swine for the treatment of dysentery (bloody scours) and broiler chickens for the control of necrotic enteritis.

**EFFECTIVE DATE:** December 10, 1997.

**FOR FURTHER INFORMATION CONTACT:** Lonnie W. Luther, Center for Veterinary Medicine (HFV–102), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0209.

**SUPPLEMENTARY INFORMATION:** I. D. Russell Co. Laboratories, 1301 Iowa Ave., Longmont, CO 80501, filed ANADA 200–189 that provides for use of lincomycin hydrochloride soluble powder to make medicated drinking water for swine for the treatment of dysentery (bloody scours) and broiler chickens for the control of necrotic enteritis caused by *Clostridium perfringens* susceptible to lincomycin.

Approval of I. D. Russell Co. Laboratories' ANADA 200–189 lincomycin hydrochloride soluble powder is as a generic copy of Pharmacia & Upjohn's NADA 111–636 Lincomix™ soluble powder. The ANADA is approved as of November 7, 1997, and the regulations are amended in 21 CFR 520.1263c(b) to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

**List of Subjects in 21 CFR Part 520**

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 520 is amended as follows:

## PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 520 continues to read as follows:

**Authority:** 21 U.S.C. 360b.

**§ 520.1263c [Amended]**

2. Section 520.1263c *Lincomycin hydrochloride soluble powder* is amended in paragraph (b) by removing ''No. 000009'' and adding in its place ''Nos. 000009 and 017144''.

Dated: December 1, 1997.

**Stephen F. Sundlof,**

*Director, Center for Veterinary Medicine.*

[FR Doc. 97–32217 Filed 12-9-97; 8:45 am]

BILLING CODE 4160–01–F

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### 32 CFR Part 320

### National Imagery and Mapping Agency (NIMA) Privacy Program

**AGENCY:** Department of Defense.

**ACTION:** Final rule.

**SUMMARY:** The document is published to make administrative changes to the National Imagery and Mapping Agency (NIMA), formerly know as the Defense Mapping Agency, Privacy Program rule.

**EFFECTIVE DATE:** This rule is effective December 10, 1997.

**FOR FURTHER INFORMATION CONTACT:** Ms. M. Flattery, 301–227–2268.

**SUPPLEMENTARY INFORMATION:**

**List of Subjects in 32 CFR Part 320**

Privacy program.

Accordingly, 32 CFR part 320 is amended as follows:

## PART 320—NATIONAL IMAGERY AND MAPPING AGENCY (NIMA) PRIVACY PROGRAM

1. The authority citation for part 320 continues to read as follows:

**Authority:** Pub. L. 93–579, 88 Stat. 1986 (5 U.S.C. 552a).

2. The part heading is revised as set forth above.

**§ 320.1 [Amended]**

3. In § 320.1, paragraph (a)(1)(i) is amended by revising ''Defense Mapping Agency (DMA)'' to read ''National Imagery and Mapping Agency (NIMA)'' and paragraph (a)(2) is amended by revising ''DMS'' to read ''NIMA.''

**§ 320.2 [Amended]**

4. In § 320.2, the definitions *Record* and *System or records* are amended by revising ''DMA'' to read ''NIMA.''

5. Section 320.3 is amended as follows:

a. Paragraph (a), paragraph (c)(2), and paragraph (d) by revising ''DMA'' to read ''NIMA'';

b. Paragraph (b) by revising ''HQ DMA or at the principal office of DMA Component (Please refer to the DMA address list at paragraph (e) of this section'' to read ''NIMA General Counsel Office (refer to the NIMA address list at paragraph (e) of this section) or at the NIMA officer'';

c. Paragraph (c) introductory text by revising ''Director of the DMA Component or Staff Office'' to read ''Office of General Counsel,'' and after the word ''section)'' and ''or NIMA office'';

d. Paragraph (e) is revised to read as follows:

**§ 320.3 Procedures for requests for information pertaining to individual records in a record system.**

* * * * *

(e) NIMA General Counsel address list.

(1) NIMA Fairfax, Attn: GC, Mail Stop A–7 NIMA Fairfax, 8613 Lee Highway, Fairfax, VA 22031–2137.

(2) NIMA Bethesda, Attn: GCM, Mail Stop D–10, 4600 Sangamore Road, Bethesda, MD 20816–5003.

(3) NIMA St. Louis, Attn: GCM Mail Stop L–32, 3200 South Second Street, St. Louis, MO 63118–3399.

(4) NIMA Navy Yard, Attn: GCM Stop, N–24, Building 213, Washington, DC 20505–0001.

(5) NIMA Westfields, Attn: GCM, Room 13F20C, 14675 Lee Road, Chantilly, VA 20151–1715.

6. Section 320.4 is amended as follows:

a. Paragraph (a), paragraph (b) introductory text, paragraph (b)(3), paragraph (c)(2), and paragraph (d) by revising ''DMA'' to read ''NIMA'';

b. Paragraph (b)(1) is amended by revising ''Headquarters Defense Mapping Agency or at the principal

office of the DMA Component'' to read ''Office of General Counsel'', and after the word ''list)'' and ''or at the NIMA office''; and paragraph (b)(2) is amended by revising ''Director Defense Mapping Agency, or at the Director of the DMA Component'' to read ''General Counsel (refer to § 320.3(e) for address list) or to the NIMA officer'';

c. The heading of paragraph (c), paragraph (c)(1) introductory text, and paragraph (c)(1)(iv) are revised to read as follows:

**§ 320.4 Disclosure of requester information to individuals.**

* * * * *

(c) *NIMA determination of requests for access.* (1) Upon receipt of a request made in accordance with this section, the NIMA Office of the General Counsel or NIMA office having responsibility for maintenance of the record in question shall release the record, or refer it to an Initial Denial Authority, who shall:

* * * * *

(iv) Requests for access to personal records may be denied only by an agency official authorized to act as an Initial Denial Authority or Final Denial Authority, after coordination with the Office of General Counsel.

* * * * *

**§ 320.5 [Amended]**

7. In § 320.5, paragraph (b) is amended by revising ''Staff Director of the DMA Headquarters or Component Staff Element'' to read ''NIMA Office of General Counsel or NIMA office''.

8. Section 320.6 is amended by revising paragraph (a) and paragraph (b) to read as follows:

**§ 320.6 Agency review of request for correction or amendment of record.**

(a) Not later than 10 working days after receipt of a request to amend a record, in whole or in part, the NIMA Office of General Counsel, or NIMA office having responsibility for maintenance of the record in question shall make any correction of any portion of the record which the individual believes is not accurate, relevant, timely or complete and thereafter inform the individual of such correction or process the request for refusal.

(b) Refusals of requests for amendment of a record will be made only by an agency official authorized to act as an Initial Denial Authority or Final Denial Authority, after coordination with the Office of General Counsel. The refusal letter will inform the individual by certified mail, return receipt requested, of refusal to amend the record setting forth the reasons therefor and notifying the individual of his right to appeal the decision to the Director, NIMA, in accordance with § 320.7.

* * * * *

**§ 320.7 [Amended]**

9. In § 320.7, paragraph (b) is amended by revising ''Director, Defense Mapping Agency'' to read ''Director, NIMA'' and ''Headquarters, Defense Mapping, Building 56, U.S. Naval Observatory, Washington, DC 20305.'' to read ''NIMA, Attn: Mail Stop D–10, 4600 Sangamore Road, Bethesda, MD 20816–5003.''; paragraph (c) introductory text is amended by revising ''Defense Mapping Agency'' to read ''NIMA, or his designee''; and paragraphs (c)(1) and (d) are amended after the word ''Director'' by adding ''or his designee''.

**§ 320.8 [Amended]**

10. Section 320.8 is amended in paragraph (a) and paragraph (c)(5) by revising ''DMA'' to read ''NIMA''; paragraph (c)(3) by revising ''§ 295.2'' to read ''Appendix C to 32 CFR part 310''; paragraph (c)(7) by revising ''Defense Mapping Agency'' to read ''NIMA''.

**§ 320.9 [Amended]**

11. Section 320.9 paragraph (b)(2)(i) and paragraph (b)(3), are amended by revising ''DMA'' to read ''NIMA''.

**§ 320.10 [Amended]**

12. Section 320.10 is amended by revising ''DMA'' to read ''NIMA''.

**§ 320.11 [Amended]**

13. Section 320.11 is amended by revising ''Defense Mapping Agency'' to read ''NIMA''.

Dated: December 4, 1997.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 97–32224 Filed 12–9–97; 8:45 am]

BILLING CODE 5000–04–M

## DEPARTMENT OF TRANSPORTATION

## Coast Guard

## 33 CFR Part 100

**[CGD07–97–062]**

**RIN 2115–AE46**

## Special Local Regulations; Puerto Rico PRO-TOUR Offshore Race, Fajardo, PR

**AGENCY:** Coast Guard, DOT.

**ACTION:** Temporary final rule.

**SUMMARY:** Special Local Regulations are being adopted for the Puerto Rico PRO-TOUR Offshore Race. The event will be held from 1 p.m. to 2:30 p.m. Atlantic Standard Time (AST) on December 14, 1997 in the waters of Rada Fajardo, due East of Villa Marine, Fajardo, Puerto Rico. These regulations are needed to provide for the safety of life on navigable waters during the event.

**DATES:** These regulations become effective from 11:30 a.m. to 3:30 p.m. AST, December 14, 1997.

**FOR FURTHER INFORMATION CONTACT:** LT. D. L. GARRISON at (787) 729–6800, ext. 227.

**SUPPLEMENTARY INFORMATION:**

### Background and Purpose

The event requiring these regulations is the Puerto Rico PRO-TOUR Offshore Race. These will be 20 high speed offshore power boats racing on a fixed course offshore Fajardo, Puerto Rico. The race boats will be competing at high speeds with numerous spectator craft in the area, creating an extra or unusual hazard in the navigable waterways. These regulations are required to provide for the safety of life on the navigable waters during the running of the PRO-TOUR Offshore Race.

In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for these regulations and good cause exists for making them effective in less than 30 days from the date of publication. The permit application was received by the unit less than six weeks before the scheduled date for the event.

### Regulatory Evaluation

This regulation is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(f) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulated policies and procedures of DOT is unnecessary.. Entry into this area is prohibited for only 4 hours on the day of the event.

### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard must consider whether this rule will have a significant economic impact on a substantial number of small entities. ''Small entities'' include small

businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their field and governmental jurisdictions with populations of less than 50,000.

Therefore, the Coast Guard certifies under section 605(b) that this rule will not have a significant economic impact upon a substantial number of small entities as these regulation will only be in effect for approximately 4 hours in a limited area off Fajardo, Puerto Rico.

**Collection of Information**

These regulations contain no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

**Federalism**

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

**Environmental Assessment**

The Coast Guard has considered the environmental impact of this action consistent with Section 2.B.2 of Commandant Instruction M16475.1B. In accordance with that section, this action has been environmentally assessed (EA completed), and the Coast Guard has determined that it will not significantly affect the quality of the human environment. An Environmental Assessment and Finding of No Significant Impact have been prepared and are available in the docket for inspection and copying.

**List of Subjects in 33 CFR Part 100**

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

**Temporary Regulations**

In consideration of the foregoing, the Coast Guard amends Part 100 of Title 33, Code of Federal Regulations, as follows:

## PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

**Authority:** 33 U.S.C. 1233, 49 CFR 1.46, and 33 CFR 100.35.

2. A temporary section 100.35T–07–062 is added to read as follows:

**§ 100.35T–07–062 Puerto Rico PRO-TOUR Offshore Race; Fajardo, Puerto Rico.**

(a) Definitions:

(1) *Regulated Area.* A regulated area is established for the waters of Rada Fajardo, due East of Villa Marine, Fajardo, Puerto Rico, in an area bounded by 18–20.0N, 065–37.2W, then North to 18–22.4N, 065–37.2W, then Northeast to 18–23.2N, 065–36.1W, then Southeast to 18–22.0N, 065–34.8W, then South to 18–20.0N, 065–34.8W and back to origin. All coordinates referenced use Datum: NAD 1983.

(2) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Section, Greater Antilles.

(b) *Special Local Regulations.*

(1) Entry into the regulated area by other than event participants is prohibited, unless otherwise authorized by the Patrol Commander. Spectator craft are required to remain in a spectator area to be established by the event sponsor west of Isle Palominos. After termination of the Puerto Rico PRO–TOUR Offshore Race on December 14, 1997, all vessels may resume normal operation. At the discretion of the Patrol Commander, between scheduled racing events, traffic may be permitted to resume normal operations.

(2) Temporary buoys will be used to delineate the course.

(c) *Dates.* This section becomes effective from 11:30 a.m. to 3:30 p.m. AST, on December 14, 1997.

Dated: December 1, 1997.

**R.C. Olsen, Jr.,**

*Captain U.S. Coast Guard, Commander, Seventh Coast Guard District, Acting.*

[FR Doc. 97–32259 Filed 12–9–97; 8:45 am]

BILLING CODE 4910–14–M

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

### 33 CFR Part 165

**[CGD13–96–028]**

**RIN 2115–AA97**

### Safety Zone Regulations; Bellingham Bay; Bellingham, WA

**AGENCY:** Coast Guard, DOT.

**ACTION:** Direct Final rule; confirmation of effective date.

**SUMMARY:** On September 11, 1996, the Coast Guard published a direct final rule (61 FR 47823, Docket Number CGD13–96–028). This direct final rule notified the public of the Coast Guard's intent to amend a safety zone regulation for the annual Fourth of July Blast Over Bellingham Fireworks Display in Bellingham Bay, Bellingham, Washington. Changes made to this regulation will revise the boundaries of the safety zone. These changes are intended to better inform the boating public and to improve the level of safety at this event. The Coast Guard has not received any adverse comments or any notice of an intent to submit adverse comments objecting to this rule as written. Therefore, this rule will go into effect as scheduled.

**DATES:** The effective date of the direct final rule is confirmed as December 10, 1996.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Joel Roberts, USCG Marine Safety Office Puget Sound, Telephone: (206) 217–6237.

Dated: November 20, 1997.

**Myles S. Boothe,**

*Captain, U.S. Coast Guard, Captain of the Port Puget Sound.*

[FR Doc. 97–32260 Filed 12–9–97; 8:45 am]

BILLING CODE 4910–14–M

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 63

**[FRL–5932–1]**

### Approval of Section 112(l) Authority for Hazardous Air Pollutants; Perchloroethylene Air Emission Standards for Dry Cleaning Facilities; State of California; San Luis Obispo County Air Pollution Control District

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** Pursuant to section 112(l) of the Clean Air Act (CAA) and through the California Air Resources Board, San Luis Obispo County Air Pollution Control District (SLOCAPCD) requested approval to implement and enforce its ''Rule 432: Perchloroethylene Dry Cleaning Operations'' (Rule 432) in place of the ''National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities'' (dry cleaning NESHAP) for area sources under SLOCAPCD's jurisdiction. The Environmental Protection Agency (EPA) has reviewed this request and has found that it satisfies all of the requirements necessary to qualify for approval. Thus, EPA is hereby granting SLOCAPCD the authority to implement and enforce Rule 432 in place of the dry cleaning NESHAP for area sources under SLOCAPCD's jurisdiction.

**DATES:** This action is effective on February 9, 1998 unless adverse or critical comments are received by January 9, 1998. If the effective date is

delayed, timely notice will be published in the **Federal Register**. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 9, 1998.

**ADDRESSES:** Comments must be submitted to Andrew Steckel at the EPA Region IX office listed below. Copies of SLOCAPCD's request for approval are available for public inspection at the following locations:

U.S. Environmental Protection Agency, Region IX, Rulemaking Office (AIR–4), Air Division, 75 Hawthorne Street, San Francisco, California 94105–3901. Docket # A–96–25.

California Air Resources Board, Stationary Source Division, 2020 ''L'' Street, P.O. Box 2815, Sacramento, California 95812–2815.

**FOR FURTHER INFORMATION CONTACT:** Mae Wang, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, California 94105–3901, (415) 744–1200.

**SUPPLEMENTARY INFORMATION:**

## I. Background

On September 22, 1993, the Environmental Protection Agency (EPA) promulgated the National Emission Standards for Hazardous Air Pollutants (NESHAP) for perchloroethylene dry cleaning facilities (*see* 58 FR 49354), which was codified in 40 CFR part 63, subpart M, ''National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities'' (dry cleaning NESHAP). On May 21, 1996, EPA approved the California Air Resources Board's (CARB) request to implement and enforce section 93109 of Title 17 of the California Code of Regulations, ''Airborne Toxic Control Measure for Emissions of Perchloroethylene from Dry Cleaning Operations'' (dry cleaning ATCM), in place of the dry cleaning NESHAP for area sources (*see* 61 FR 25397). This approval became effective on June 20, 1996.

Thus, under federal law, from September 22, 1993, to June 20, 1996, all California dry cleaning facilities using perchloroethylene were subject to the dry cleaning NESHAP. Since June 20, 1996, all California dry cleaning facilities using perchloroethylene that qualify as area sources are subject to the Federally-approved dry cleaning ATCM; major sources, as defined by the dry cleaning NESHAP, remain subject to the dry cleaning NESHAP and the Clean Air Act (CAA) Title V operating permit program.

On April 25, 1997, EPA received, through CARB, San Luis Obispo County Air Pollution Control District's (SLOCAPCD) request for approval to implement and enforce its November 13, 1996, revision of ''Rule 432: Perchloroethylene Dry Cleaning Operations'' (Rule 432), in place of the Federally-approved dry cleaning ATCM for area sources under SLOCAPCD's jurisdiction. The scope of SLOCAPCD's request is limited to the authorities previously granted to CARB in its request, i.e., the request does not include major sources and does not include the authority to determine equivalent emission control technology for dry cleaning facilities in place of 40 CFR 63.325.

## II. EPA Action

### *A. SLOCAPCD's Dry Cleaning Rule*

Under CAA section 112(l), EPA may approve state or local rules or programs to be implemented and enforced in place of certain otherwise applicable CAA section 112 Federal rules, emission standards, or requirements. The Federal regulations governing EPA's approval of state and local rules or programs under section 112(l) are located at 40 CFR part 63, subpart E (*see* 58 FR 62262, dated November 26, 1993). Under these regulations, a local air pollution control agency has the option to request EPA's approval to substitute a local rule for the applicable Federal rule. Upon approval, the local agency is given the authority to implement and enforce its rule in place of the otherwise applicable Federal rule. To receive EPA approval using this option, the requirements of 40 CFR 63.91 and 63.93 must be met.

After reviewing the request for approval of SLOCAPCD's Rule 432, EPA has determined that this request meets all the requirements necessary to qualify for approval under CAA section 112(l) and 40 CFR 63.91 and 63.93. Accordingly, with the exception of the dry cleaning NESHAP provisions discussed in sections II.A.1 and II.A.2 below, SLOCAPCD is granted the authority to implement and enforce Rule 432 in place of the Federally-approved dry cleaning ATCM. Although SLOCAPCD now has primary implementation and enforcement responsibility, EPA retains the right, pursuant to CAA section 112(l)(7), to enforce any applicable emission standard or requirement under CAA section 112. As of the effective date of this action, SLOCAPCD's Rule 432 is the Federally-enforceable standard for area sources under SLOCAPCD's jurisdiction. This rule will be enforceable by the EPA Administrator and citizens under the CAA.

1. Major Dry Cleaning Sources

Under the dry cleaning NESHAP, dry cleaning facilities are divided between major sources and area sources. SLOCAPCD's request for approval included only those provisions of the dry cleaning NESHAP that apply to area sources. Thus, dry cleaning facilities using perchloroethylene that qualify as major sources, as defined by the dry cleaning NESHAP, remain subject to the dry cleaning NESHAP and the CAA Title V operating permit program.

2. Authority to Determine Equivalent Emission Control Technology for Dry Cleaning Facilities

Under the dry cleaning NESHAP, any person may petition the EPA Administrator for a determination that the use of certain equipment or procedures is equivalent to the standards contained in the dry cleaning NESHAP (*see* 40 CFR 63.325). In its request, SLOCAPCD did not seek approval for the provisions in Rule 432 that would allow for the use of alternative emission control technology without previous approval from EPA (i.e., Rule 432 sections B.17, G.3.a.5, G.3.b.2.iii, and I). A source seeking permission to use an alternative means of emission limitation under CAA section 112(h)(3) must receive approval, after notice and opportunity for comment, from EPA before using such alternative means of emission limitation for the purpose of complying with CAA section 112.

### *B. California's Authorities to Implement and Enforce CAA Section 112 Standards*

1. Penalty Authorities

As part of its request for approval of the dry cleaning ATCM, CARB submitted a finding by California's Attorney General stating that ''State law provides civil and criminal enforcement authority consistent with [40 CFR] 63.91(b)(1)(i), 63.91(b)(6)(i), and 70.11, including authority to recover penalties and fines in a maximum amount of not less than $10,000 per day *per violation* . . .'' [emphasis added]. In accordance with this finding, EPA understands that the California Attorney General interprets section 39674 and the applicable sections of Division 26, Part 4, Chapter 4, Article 3 (''Penalties'') of the California Health and Safety Code as allowing the collection of penalties for multiple violations per day. In addition, EPA also understands that the California Attorney General interprets section 42400(c)(2) of the California Health and Safety Code as allowing for, among other things, criminal penalties for knowingly rendering inaccurate any

monitoring *method* required by a toxic air contaminant rule, regulation, or permit.

As stated in section II.A above, EPA retains the right, pursuant to CAA section 112(l)(7), to enforce any applicable emission standard or requirement under CAA section 112, including the authority to seek civil and criminal penalties up to the maximum amounts specified in CAA section 113.

2. Variances

Division 26, Part 4, Chapter 4, Articles 2 and 2.5 of the California Health and Safety Code provide for the granting of variances under certain circumstances. EPA regards these provisions as wholly external to SLOCAPCD's request for approval to implement and enforce a CAA section 112 program or rule and, consequently, is proposing to take no action on these provisions of state law. EPA has no authority to approve provisions of state or local law, such as the variance provisions referred to, that are inconsistent with the CAA. EPA does not recognize the ability of a state or local agency who has received delegation of a CAA section 112 program or rule to grant relief from the duty to comply with such Federally-enforceable program or rule, except where such relief is granted in accordance with procedures allowed under CAA section 112. As stated above, EPA retains the right, pursuant to CAA section 112(l)(7), to enforce any applicable emission standard or requirement under CAA section 112.

Similarly, section 39666(f) of the California Health and Safety Code allows local agencies to approve alternative methods from those required in the ATCMs, but only as long as such approvals are consistent with the CAA. As mentioned in section II.A.2 above, a source seeking permission to use an alternative means of emission limitation under CAA section 112 must also receive approval, after notice and opportunity for comment, from EPA before using such alternative means of emission limitation for the purpose of complying with CAA section 112.

## III. Administrative Requirements

*A. Regulatory Flexibility Act*

Under the Regulatory Flexibility Act, 5 U.S.C. section 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. sections 603 and 604. Alternatively, EPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

Approvals under 40 CFR 63.93 do not create any new requirements, but simply approve requirements that the state or local agency is already imposing. Therefore, because this approval does not impose any new requirements, it does not have a significant impact on affected small entities.

*B. Unfunded Mandates Reform Act*

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to state, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

*C. Submission to Congress and the General Accounting Office*

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a ''major'' as defined by 5 U.S.C. 804(2).

*D. Petitions for Judicial Review*

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 9, 1998. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (*see* section 307(b)(2)).

*E. Executive Order 12866*

The Office of Management and Budget has exempted this regulatory action from review under Executive Order 12866.

**List of Subjects in 40 CFR Part 63**

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

**Authority:** This action is issued under the authority of section 112 of the Clean Air Act, as amended, 42 U.S.C. section 7412.

Dated: November 23, 1997.

**Felicia Marcus,**

*Regional Administrator, Region IX.*

Title 40, chapter I, part 63 of the Code of Federal Regulations is amended as follows:

## PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

**Authority:** 42 U.S.C. 7401, *et seq.*

2. Section 63.14 is amended by revising paragraph (d)(1) to read as follows:

**§ 63.14 Incorporation by reference.**

* * * * *

(d) * * *

(1) *California Regulatory Requirements Applicable to the Air Toxics Program*, August 1, 1997, IBR approved for § 63.99(a)(5)(ii) of subpart E of this part.

* * * * *

## Subpart E—Approval of State Programs and Delegation of Federal Authorities

3. Section 63.99 is amended by revising paragraphs (a)(5)(ii) introductory text, (a)(5)(ii)(A) introductory text, and by adding paragraph (a)(5)(ii)(B), to read as follows:

**§ 63.99 Delegated federal authorities.**

(a) * * *

(5) * * *

(ii) Affected sources must comply with the *California Regulatory Requirements Applicable to the Air Toxics Program,* August 1, 1997 (incorporated by reference as specified in § 63.14) as described below.

(A) The material incorporated in Chapter 1 of the *California Regulatory Requirements Applicable to the Air Toxics Program* California Code of Regulations Title 17, section 93109) pertains to the perchloroethylene dry cleaning source category in the State of California, and has been approved under the procedures in § 63.93 to be implemented and enforced in place of subpart M—National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities, as it applies to area sources only, as defined in § 63.320(h).

* * * * *

(B) The material incorporated in Chapter 2 of the *California Regulatory Requirements Applicable to the Air Toxics Program* (San Luis Obispo County Air Pollution Control District Rule 432) pertains to the perchloroethylene dry cleaning source category in the San Luis Obispo County Air Pollution Control District, and has been approved under the procedures in § 63.93 to be implemented and enforced in place of subpart M—National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities, as it applies to area sources only, as defined in § 63.320(h).

(*1*) Authorities not delegated.

(*i*) San Luis Obispo County Air Pollution Control District is not delegated the Administrator's authority to implement and enforce those provisions of subpart M which apply to major sources, as defined in § 63.320(g). Dry cleaning facilities which are major sources remain subject to subpart M.

(*ii*) San Luis Obispo County Air Pollution Control District is not delegated the Administrator's authority of § 63.325 to determine equivalency of emissions control technologies. Any source seeking permission to use an alternative means of emission limitation, under sections B.17, G.3.a.5, G.3.b.2.iii, and I of Rule 432, must also receive approval from the Administrator before using such alternative means of emission limitation for the purpose of complying with section 112.

* * * * *

[FR Doc. 97–32329 Filed 12–9–97; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 81

[CA–002–BU; FRL–5932–6]

## Clean Air Act Reclassification; California—Santa Barbara Nonattainment Area; Ozone

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is finding that the Santa Barbara nonattainment area has not attained the 1-hour ozone national ambient air quality standard (NAAQS) by the applicable attainment date in the Clean Air Act (CAA) for moderate ozone nonattainment areas, which is November 15, 1996. The finding is based on EPA's review of monitored air quality data from 1994 through 1996 for compliance with the 1-hour ozone NAAQS. As a result of the finding, the Santa Barbara ozone nonattainment area will be reclassified by operation of law as a serious ozone nonattainment area on the effective date of this action. The effect of the reclassification will be to continue progress toward attainment of the 1-hour ozone NAAQS through the development of a new State implementation plan (SIP), due 12 months from the effective date of this action, addressing attainment of that standard by November 15, 1999.

**EFFECTIVE DATE:** January 9, 1998.

**FOR FURTHER INFORMATION CONTACT:** Dave Jesson, Office of Air Planning, AIR–2, Air Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, California 94105–3901, (415) 744–1288.

**SUPPLEMENTARY INFORMATION:**

### I. Background

Under sections 107(d)(1)(C) and 181(a) of the Clean Air Act (CAA) as amended in 1990, Santa Barbara County was designated nonattainment for the 1-hour ozone NAAQS and classified as ''moderate.'' See 56 FR 56694 (November 6, 1991). Moderate nonattainment areas were required to show attainment by November 15, 1996. CAA section 181(a)(1).

Pursuant to section 181(b)(2)(A) of the CAA, EPA has the responsibility for determining, within 6 months of an area's applicable attainment date, whether the area has attained the 1-hour ozone NAAQS.[1] Under section 181(b)(2)(A), if EPA finds that an area has not attained the 1-hour ozone NAAQS, it is reclassified by operation of law to the higher of the next higher classification or to the classification applicable to the area's design value at the time of the finding. CAA section 181(b)(2)(B) requires EPA to publish a document in the **Federal Register** identifying areas which failed to attain the standard and therefore must be reclassified by operation of law. A complete discussion of the statutory provisions and EPA policies governing findings of whether an area failed to attain the ozone NAAQS can be found in the proposal for this action at 62 FR 46234 (September 2, 1997).

### II. Proposed Action

On September 2, 1997, EPA proposed to find that the Santa Barbara ozone nonattainment area failed to attain the 1-hour ozone NAAQS by the applicable attainment date. The proposed finding was based upon ambient air quality data from the years 1994–1996. The data showed that the 1-hour ozone NAAQS of 0.12 parts per million (ppm) had been exceeded on average more than one day per year over this 3-year period. Attainment of the 1-hour NAAQS is demonstrated when an area averages one or less days per year over the standard during a 3-year period. 40 CFR 50.9 and Appendix H. EPA also proposed that the appropriate reclassification of the area was to serious, based on the area's 1994–1996 design value of 0.130 ppm. This design value is well below the range of 0.180 to 0.280 ppm for a severe classification. For a complete discussion of the Santa Barbara ozone data and the method of calculating both the average number of days over the ozone standard and the design value, see 62 FR 46235–6.[2]

Finally, EPA proposed to require submittal of the serious area SIP revisions no later than 12 months from the effective date of the area's reclassification.

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On July 18, 1997 (62 FR 38856), EPA revised the ozone NAAQS to establish a 8-hour standard; however, in order to ensure an effective transition to the new 8-hour standard, EPA also retained the 1-hour NAAQS for an area until such time as it determines that the area meets the 1-hour standard. See revised 40 CFR 50.9 at 62 FR 38894. As a result of retaining the 1-hour standard, CAA part D, subpart 2, *Additional Provisions for Ozone Nonattainment Areas*, including the reclassification provisions of section 181(b), remain applicable to areas that are not attaining the 1-hour standard. Unless otherwise indicated, all references in this notice are to the 1-hour ozone NAAQS.

[2] EPA wishes to correct one number in the table in the proposal entitled ''Average Number of Ozone Exceedance Days Per Year in the Santa Barbara Area'' (62 FR 46236). SBCAPCD pointed out that the correct site design value for the El Capitan station for 1994–1996 is 0.118 ppm, rather than 0.119 ppm.

## III. Response To Comments

In response to its September 2, 1997 proposal, EPA received comments from the Environmental Defense Center, Congressman Walter Capps, the Santa Barbara County Air Pollution Control District (SBCAPCD), the Chair of the SBCAPCD Board, the California Air Resources Control Board (CARB), the Santa Barbara Association of Realtors, and one private citizen. EPA is grateful for the comments, suggestions, and helpful information, and the Agency responds below.

### *A. Comments Related to Splitting the Nonattainment Area and Reclassifying Only the South Portion of the County*

The entire Santa Barbara County has been designated nonattainment and classified moderate since November 15, 1990, the date of enactment of the 1990 amendments to the Clean Air Act. 56 FR 56694 and 56 FR 56729. In the proposal, EPA noted that SBCAPCD had asked the Agency to consider dividing the County along a specific boundary line (for the most part, along the ridge of the Santa Ynez Mountain Range), and then applying the reclassification to only the south portion of the County. EPA proposed to determine, pursuant to section 181(a)(2), that the existing nonattainment area did not meet the 1-hour ozone NAAQS. However, in response to SBCAPCD's request, the Agency sought comment on the technical rationale for applying the resulting reclassification to only the south portion, including information on the north portion's impact on air quality in the south, and information on current and expected air quality in the north portion in relation to the new 8-hour ozone standard. 62 FR 46236.

Although a number of commenters urged splitting the nonattainment area, EPA is not currently inclined to do so, based on the available information, as discussed further below. Moreover, the Agency believes that in order to accomplish such a result, it would have to initiate additional rulemaking in order to comply with the Administrative Procedure Act, 5 U.S.C. 551 *et seq.* However, because most of the comments in response to the proposed reclassification were directed to this issue, EPA is preliminarily addressing them here.

*1. Comments on the impacts of reclassifying only the south portion:* The late Congressman Walter Capps encouraged EPA to change the size of the affected nonattainment area and focus control efforts on those areas that are causing the pollution problems. SBCAPCD and CARB expressed a desire to minimize the impacts of the reclassification to serious, particularly within the north portion of the county, where no site has violated the 1-hour ozone NAAQS since the 1989–1991 period.

EDC, on the other hand, noted specific adverse impacts if the north portion of the County were not to be bumped up: (1) The potential loss of revenues to the County from several Federal funding sources, including Congestion Management and Air Quality (CMAQ) monies; (2) the dislocating impacts on the County's fee structures and rule implementation and enforcement efforts, and other logistical and financial ramifications; (3) the loss of increased agricultural productivity in the north portion if the air quality benefits associated with the bump-up of the entire County are foregone; (4) the need to undertake a wholesale revision to the SIP, and to require additional emissions reductions only from sources in the south portion; (5) the disruption of air quality planning, if the north county (where the margin of attainment is very slim) slips back into nonattainment for the 1-hour standard, triggering the need for additional reductions, but too late to avoid a 1999 nonattainment finding; and (6) the complication for air quality planning if the north portion continues to exceed the 8-hour ozone NAAQS and the State and District must therefore prepare separate plans for the north and south portions.

*Response:* EPA fully supports streamlining and targeting plan requirements, and will work with SBCAPCD and CARB to maximize flexibility and cost effectiveness in the preparation of the SIP revision. So long as the few minimum CAA mandates are met, SBCAPCD and CARB are entitled to impose new controls of different stringency in different portions of the County. This is true regardless of whether or not the reclassification is restricted only to the south portion. Whether the reclassification may be limited to only the southern portion depends on the technical basis. The technical basis is discussed below. In any event, EPA believes that EDC raises important, potentially unfavorable consequences of splitting the County and reclassifying only the south portion. EPA urges CARB and SBCAPCD to consider such possible detrimental aspects of significantly changing the focus of air pollution control efforts in the County.

*2. Comments on the technical basis for reclassifying only the south portion:* SBCAPCD provided technical information on the air quality and meteorological basis for limiting the bump-up to the south portion, including an assessment of the contribution the north portion of the County has on days when the south portion exceeded the 1-hour ozone NAAQS in the period 1994 through 1996. SBCAPCD concluded from this analysis that on most of the exceedance days contributions from the north portion do not appear to be significant, but that on other exceedance days contributions from the north portion of the County could not be ruled out with the available data. The District noted that one monitor in the north portion recorded violations of the new 8-hour NAAQS for the 1994–1996 period, but SBCAPCD expressed the belief that anticipated reductions in regional and local emissions should cause the site to be in compliance with the 8-hour standard by 2000.

CARB pointed to the absence of violations of the 1-hour ozone standard in the north portion since 1991, referenced a downward emissions trend, and stated that the north and south portions of the County are geographically distinct. CARB concluded that EPA should reconsider the proposal to reclassify the entire County.

EDC, on the other hand, strongly opposed bifurcating the nonattainment area and presented: (1) technical information relating to rapid development now occurring in, or planned for, the north portion of the County, making an increase in mobile source emissions highly probable; (2) air quality data showing that several monitoring locations in the north portion experience exceedances or near-exceedances of the new Federal 8-hour NAAQS and routinely exceed the State 1-hour ozone standard (0.09 ppm); (3) arguments that the existing monitoring network is inadequate to record peak concentrations and that high elevation stations should be located near urbanized north County areas; and (4) arguments that modeling shows that the entire southern California region shares at least portions of airsheds at times, and that the north portion is both a downwind/recipient region and an upwind/contributor region, and that therefore the failure to bump up the north portion of the County could impair the efforts of Ventura and the South Coast areas to attain.

*Response:* EPA agrees with SBCAPCD that, for the period 1994–1996, most exceedances appear to have been influenced by areas to the southeast, rather than from the north portion of the County. EPA is not convinced at this time that the available data and analyses (which do not include photochemical

modeling information) provide conclusive evidence that sources in the north portion would not significantly impact air quality in the south portion under meteorological conditions that have occurred in the area, and may occur in the future. While the existing modeling domain does not cover the bulk of the north portion, it is possible that useful urban airshed modeling (UAM) for the entire County will be available from the Southern California Ozone Study (SCOS), a broad scale regional air quality assessment undertaken this year. EPA hopes that this information will allow for a more informed decision regarding the impacts of emissions in the north portion on ozone concentrations in the south portion, both with respect to the 1-hour and the 8-hour ozone standards.

EPA continues to review the submitted data and conclusions, and has requested additional information from SBCAPCD relating to the amount of manmade and biogenic emissions in the north portion compared to the south portion of the County. SBCAPCD has provided this data, which is part of the rulemaking docket. The SBCAPCD data on point source emissions indicate that south county sources emit approximately 26% of reactive organic gases (ROG) and 8.5% of nitrogen oxides (NOx), north county sources emit roughly 53% of ROG and 65% of NOx, and the remaining emissions occur in the Outer Continental Shelf (OCS). EPA has not yet received data on the north-south split of mobile source emissions, including VMT, but the high proportion of industrial emissions in the north portion by itself suggests the potential for significant impacts from these sources on ozone concentrations in the south portion.

Moreover, as discussed in response to the comment below on procedural issues, EPA does not believe that the Agency could revise, in this final action, the nonattainment boundaries or establish separate nonattainment areas with different classifications, since the public involvement requirements of the Administrative Procedure Act, including notice and comment, have not yet been satisfied for this issue. EPA offers to work closely with the SBCAPCD, CARB, and other interested parties if they wish to assemble and analyze all of the necessary information to determine whether reclassification or redesignation is appropriate.

*3. Comments on procedural issues associated with reclassifying only the south portion or redesignating the north portion to attainment:* SBCAPCD noted that while certain procedural requirements of section 107 of the CAA may still need to be addressed, EPA may at this time determine that available information indicates that the north portion should not be classified as a serious nonattainment area. SBCAPCD stated that EPA can use its authority under section 110(k)(6) of the Act to correct the boundaries of nonattainment areas where information reveals that the previous boundaries were in error.

EDC stated that EPA's notice of proposed rulemaking cannot serve as a vehicle for redesignation of the nonattainment boundaries, since the notice did not propose partial reclassification and lacked the specificity to alert interested parties to the relevant facts. EDC concluded that a final EPA action reclassifying only the south portion would fail to meet the requirements of the Administrative Procedures Act regarding full disclosure of the legal basis, supporting facts, and logical rationale for a partial reclassification action, and therefore would fail to provide a fair opportunity for the public to consider and review the action. EDC also referenced section 107(d)(3)(E) of the CAA, which requires a series of determinations and approvals before redesignation to attainment, if the north portion were not to retain a moderate nonattainment classification but be redesignated to attainment. EDC noted that prerequisite to redesignation must be full approval of applicable attainment and maintenance plans, findings of the permanence and enforceability of emission reductions, and other factual conclusions which are not appropriate for the north portion of the County at this time.

*Response:* EPA agrees with EDC that the proposal published on September 2, 1997, does not meet applicable procedural requirements for public notice and involvement on issues relating to a bump up of only the south portion. For this reason, EPA is not taking final action at this time to divide the County into two nonattainment areas.

Moreover, as discussed above, EPA does not believe that currently available information supports a determination that the county-wide boundary for Santa Barbara is in error.

Finally, if the State and SBAPCD intend the north portion of the County to be redesignated to attainment, the CAA specifies both procedural and substantive steps that the Governor and EPA must take before a redesignation or boundary change is proposed.[3] If the State wishes the north portion to be designated as a separate nonattainment area, EPA would also need to identify appropriate SIP requirements for the area. EPA will protect the public's rights to be involved in, and to provide constructive input to, any future decisionmaking on reclassification and redesignation.

*B. Comments Related to Pollutant Transport*

*Comment:* SBCAPCD and the late Congressman Capps urged EPA to recognize the contribution of transport of air pollution into Santa Barbara County from upwind areas, and asked EPA to help ensure that these areas meet their responsibilities in mitigating their transport. SBCAPCD also requested EPA assistance in quantifying these impacts.

*Response:* As noted above, the SCOS was undertaken this year. The domain of the SCOS extends from Santa Barbara to northern Mexico. This study was designed to provide, for the first time, scientific information on the extent to which ozone and ozone precursors travel within this area. EPA has provided funding for the SCOS, and expects to continue to provide technical support to the cooperative project. EPA hopes that the SCOS will lead to the development of new analytical tools, including updated and enhanced UAM

[3] In the 1990 amendments to the Clean Air Act, Congress established by operation of law boundaries for ozone and carbon monoxide nonattainment areas classified as serious, severe, or extreme. Congress set the default boundary for these areas as the metropolitan statistical area (MSA) or consolidated metropolitan statistical area (CMSA). CAA Section 107(d)(4)(iv). This expansive boundary was selected in order to ensure that nonattainment areas would not be reduced to a size that would frustrate regional planning or jeopardize long-term attainment prospects because of pollution transported into the nonattainment area from rapidly growing suburban areas.

In section 107(d)(4)(A)(v) of the Act, Congress identified some of the criteria to be used in determining whether any portion of an MSA or CMSA could be excluded from an ozone or carbon monoxide nonattainment area. ''Whenever a Governor finds and demonstrates to the satisfaction of the Administrator, and the Administrator concurs in such finding, that with respect to a portion of a metropolitan statistical area or consolidated metropolitan statistical area, sources in the portion do not contribute significantly to violation of the national ambient air quality standard, the Administrator shall approve the Governor's request to exclude such portion from the nonattainment area. In making such finding, the Governor and the Administrator shall consider factors such as population density, traffic congestion, commercial development, industrial development, meteorological conditions, and pollution transport.''

The State of California formally concurred in the county-wide boundaries for the Santa Barbara ozone nonattainment area, which were confirmed by EPA in the initial promulgation of designations and classifications under the 1990 amendments to the CAA. See letter from James D. Boyd, CARB Executive Officer, to Daniel W. McGovern, Regional Administrator, USEPA Region 9, dated March 15, 1991; and 56 FR 56729, November 6, 1991 (codified at 40 CFR 81.305).

modeling, to predict with much greater precision the air quality impacts of locally generated emissions and pollution transported from upwind areas. Based on this information, the State and local air pollution control districts should be able to develop more effective air quality plans that can speed progress toward meeting the health-based NAAQS and achieving other environmental benefits. In the meantime, EPA has advised all Southern California air pollution control agencies that they must responsibly implement their air quality plans to ensure that air quality progress in downwind areas is not jeopardized.

*C. Miscellaneous Comments*

*Comment:* The Santa Barbara Association of Realtors (SBAR) noted that only 7 percent of the total emissions in the County can be regulated by the SBCAPCD, that the District has gone just about as far as they can go to reduce emissions, and that the imposition of harsher air quality standards on the local business community will revert the County into another recession. SBAR urged flexibility, and recommended that EPA grant a waiver of one to three years for the County to meet the 1996 ozone standard, rather than punish the area ''for failure to meet a questionable standard in a minuscule manner in an exact time period. * * *''

*Response:* EPA agrees with SBAR that the SBCAPCD and local industry working in concert have an excellent record of environmental commitment and innovation in identifying and implementing available controls. This extraordinary cooperative local effort was honored last year when the SBCAPCD received both the Presidential Award for sustainable Development and the Governor's Environmental and Economic Leadership Award.

While EPA may desire more flexibility in this situation to reward Santa Barbara County for its demonstrated leadership, the Agency has not been granted that flexibility under the Clean Air Act. The CAA does not allow for reviewing an area's efforts to adopt controls or the comparative availability of new control opportunities within an area. Determining whether an area met its attainment deadline is based solely on available ambient air quality data.

The classification structure of the Act is a clear statement of Congress's belief that the later attainment deadlines afforded higher-classified and reclassified areas as due to the greater stringency of controls. The reclassification provisions of the Clean Air Act are not punitive, but rather are a reasonable mechanism to assure continued progress toward attainment of the health-based ambient air quality standards when areas miss their attainment deadlines.

Neither the provisions of 40 CFR 50.9, as revised (62 FR 38856 and 62 FR 38894), nor any other statutory or regulatory provisions, provide EPA with the authority to suspend enforcement of the 1-hour NAAQS in Santa Barbara. Moreover, the Santa Barbara area has not complied with some of the most significant serious area requirements (e.g., the 9 percent rate of progress requirement). Finally EPA believes that complying with those requirements will have a positive, not detrimental, effect on the ability of Santa Barbara to comply with the 8-hour standard.

*Comment:* SBAR commented that EPA should complete a ''cost versus benefit'' analysis and should attempt to mitigate economic burdens associated with reclassification through incentive and inducement rather than punitive measures with a ''command and control'' mentality.

*Response:* Congress established in the CAA certain SIP requirements for serious ozone areas. EPA does not mandate any specific controls or control approach beyond these statutory requirements, and encourages State and local agencies to pursue pollution prevention and other techniques for achieving the CAA public health goals while minimizing costs and dislocations. The Agency encourages SBAR to suggest specific ways in which the Federal government could provide incentives and inducements.

*Comment:* EDC noted that EPA and SBCAPCD had delayed in responding to 1996 violations. EDC stated that setting a one year period after the effective date of EPA's action would allow too long a period for SIP submittal. EDC suggested February 1998 as the SIP submittal deadline, unless SBCAPCD begins adopting and implementing additional control measures immediately to assure progress towards attainment by November 1999.

*Response:* EPA believes that the SIP schedule—submission of a SIP meeting all applicable CAA requirements for a serious ozone nonattainment area by one year from the effective date of this final action—is ambitious but grants sufficient time for completing necessary technical analyses, interactions with involved agencies and the public, and rule development activities. In addition, this schedule should allow for implementation of the plan during the full ozone season in 1999, the attainment year. EPA believes that it would be unrealistic to require plan submission at an earlier date or to mandate prior rule adoption by the SBCAPCD.

## IV. Final Action

EPA is finding that the Santa Barbara ozone nonattainment area did not attain the ozone NAAQS by November 15, 1996, the CAA attainment date for moderate ozone nonattainment areas. As a result of this finding, the Santa Barbara ozone nonattainment area is reclassified by operation of law as a serious ozone nonattainment area on the effective date of today's action and the submittal of the serious area SIP revisions will be due no later than 12 months from this effective date. The requirements for this SIP submittal are established in CAA section 182(c) and applicable EPA guidance.

Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future action. Each finding of failure to attain, request for an extension of an attainment date, and establishment of a SIP submittal date shall be considered separately and shall be based on the factual situation of the area under consideration and in relation to relevant statutory and regulatory requirements.

## V. Administrative Requirements

*A. Executive Order (E.O.) 12866*

Under E.O. 12866, (58 FR 51735, October 4, 1993), EPA is required to determine whether today's action is a ''significant regulatory action'' within the meaning of the E.O., and therefore should be subject to OMB review, economic analysis, and the requirements of the E.O. *See* E.O. 12866, sec. 6(a)(3). The E.O. defines, in sec. 3(f), a ''significant regulatory action'' as a regulatory action that is likely to result in a rule that may meet at least 1 of 4 criteria identified in section 3(f), including,

(1) have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

EPA has determined that neither the finding of failure to attain it is making

today, nor the establishment of SIP submittal schedule would result in any of the effects identified in E.O. 12866 sec. 3(f). As discussed above, findings of failure to attain under section 181(b)(2) of the Act are based upon air quality considerations, and reclassifications must occur by operation of law in light of certain air quality conditions. These findings do not, in and of themselves, impose any new requirements on any sectors of the economy. In addition, because the statutory requirements are clearly defined with respect to the differently classified areas, and because those requirements are automatically triggered by classifications that, in turn, are triggered by air quality values, findings of failure to attain and reclassification cannot be said to impose a materially adverse impact on State, local, or tribal governments or communities. Similarly, the establishment of new SIP submittal schedules merely establishes the dates by which SIPs must be submitted, and does not adversely affect entities.

*B. Regulatory Flexibility*

Under the Regulatory Flexibility Act, 5 U.S.C. 601 et. seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

As discussed above, a finding of failure to attain (and the consequent reclassification by operation of law of the nonattainment area) under section 181(b)(2) of the Act, and the establishment of a SIP submittal schedule for a reclassified area, do not, in-and-of-themselves, directly impose any new requirements on small entities. *See Mid-Tex Electric Cooperative, Inc.* v. *FERC*, 773 F.2d 327 (D.C. Cir. 1985) (agency's certification need only consider the rule's impact on entities subject to the requirements of the rule). Instead, this rulemaking simply makes a factual determination and establishes a schedule to require States to submit SIP revisions, and does not directly regulate any entities. Therefore, pursuant to 5 U.S.C. 605(b), EPA reaffirms its certification made in the proposal (62 FR 46233) that today's final action will not have a significant impact on a substantial number of small entities within the meaning of those terms for RFA purposes.

*C. Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), P.L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, when EPA promulgates ''any general notice of proposed rulemaking that is likely to result in promulgation of any rule that includes any Federal mandate that may result in the expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more'' in any 1 year. A ''Federal mandate'' is defined, under section 101 of UMRA, as a provision that ''would impose an enforceable duty'' upon the private sector or State, local, or tribal governments'', with certain exceptions not here relevant. Under section 203 of UMRA, EPA must develop a small government agency plan before EPA ''establish[es] any regulatory requirements that might significantly or uniquely affect small governments.'' Under section 204 of UMRA, EPA is required to develop a process to facilitate input by elected officers of State, local, and tribal governments for EPA's ''regulatory proposals'' that contain significant Federal intergovernmental mandates. Under section 205 of UMRA, before EPA promulgates ''any rule for which a written statement is required under [UMRA sec.] 202,'' EPA must identify and consider a reasonable number of regulatory alternatives and either adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule, or explain why a different alternative was selected.

Generally, EPA has determined that the provisions of sections 202 and 205 of UMRA do not apply to this decision. Under section 202, EPA is to prepare a written statement that is to contain assessments and estimates of the costs and benefits of a rule containing a Federal Mandate ''unless otherwise prohibited by law.'' Congress clarified that ''unless otherwise prohibited by law'' referred to whether an agency was prohibited from considering the information in the rulemaking process, not to whether an agency was prohibited from collecting the information. The Conference Report on UMRA states, ''This section [202] does not require the preparation of any estimate or analysis if the agency is prohibited by law from considering the estimate or analysis in adopting the rule.'' 141 Cong. Rec. H3063 (Daily ed. March 13, 1995). Because the Clean Air Act prohibits, when determining whether an area attained the ozone standard or met the criteria for an extension, from considering the types of estimates and assessments described in section 202, UMRA does not require EPA to prepare a written statement under section 202. Although the establishment of a SIP submission schedule may impose a Federal mandate, this mandate would not create costs of $100 million or more, and therefore, no analysis is required under section 202. The requirements in section 205 do not apply because those requirements for rules ''for which a written statement is required under section 202. * * *''

With regard to the outreach described in UMRA section 204, EPA discussed its proposed action in advance of the proposal with State officials.

Finally, section 203 of UMRA does not apply to today's action because the regulatory requirements finalized today—the SIP submittal schedule—affect only the State of California, which is not a small government under UMRA.

*D. Submission to Congress and the General Accounting Office*

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

*E. Petitions for Judicial Review*

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 9, 1998. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. See section 307(b)(2).

**List of Subjects in 40 CFR Part 81**

Environmental protection, Air pollution control, Intergovernmental relations, ozone.

Dated: November 26, 1997.

**Felicia Marcus,**

*Regional Administrator.*

Part 81, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

## PART 81—[AMENDED]

1. The authority citation for part 81 continues to read as follows:

**Authority:** 42 U.S.C. 7401–7671q.

2. In § 81.305 the table for California—Ozone, is amended by revising the entry for ''Santa Barbara-Santa Maria-Lompoc Area Santa Barbara County'' to read as follows:

**§ 81.305 California.**

* * * * *

CALIFORNIA-OZONE

| Designated area | Designation | | Classification | |
|---|---|---|---|---|
| | Date [1] | Type | Date [1] | Type |
| * * * * | * | * | | * |
| Santa Barbara-Santa Maria-Lompoc Area Santa Barbara County ..... | 11/15/90 | Nonattainment .... | 1–9–98 | Serious. |
| * * * * | * | * | | * |

[1] This date is November 15, 1990, unless otherwise noted.

[FR Doc. 97–32332 Filed 12–9–97; 8:45 am]
**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 180

**[OPP–300588; FRL–5758–2]**

**RIN 2070–AB78**

## Cyromazine; Pesticide Tolerances for Emergency Exemptions

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes time-limited tolerances for the combined residues of cyromazine and its metabolite melamine in or on lima beans and blackeye peas. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of the pesticide on lima beans and blackeye peas. This regulation establishes a maximum permissible level for residues of cyromazine in this food commodity pursuant to section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996. The tolerance will expire and is revoked on December 31, 1998.

**DATES:** This regulation is effective December 10, 1997. Objections and requests for hearings must be received by EPA on or before February 9, 1998.

**ADDRESSES:** Written objections and hearing requests, identified by the docket control number, [OPP–300588], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300588], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 1132, CM 2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov.

Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP–300588]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

**FOR FURTHER INFORMATION CONTACT:** By mail: Andrew Ertman, Registration Division 7505C, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Crystal Mall 2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 308–9367, e-mail: ertman.andrew@epamail.epa.gov.

**SUPPLEMENTARY INFORMATION:** EPA, on its own initiative, pursuant to section 408(e) and (l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e) and (l)(6), is establishing a tolerance for combined residues of the insecticide cyromazine and its metabolite melamine in or on lima beans at 5.0 part per million (ppm) and blackeye peas at 5.0 ppm. This tolerance will expire and is revoked on December 31, 998. EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the Code of Federal Regulations.

### I. Background and Statutory Authority

The Food Quality Protection Act of 1996 (FQPA) (Pub. L. 104–170) was signed into law August 3, 1996. FQPA amends both the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 301 *et seq.*, and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 *et seq.* The FQPA amendments went into effect immediately. Among other things, FQPA amends FFDCA to bring all EPA pesticide tolerance-setting activities under a new section 408 with a new safety standard and new procedures. These activities are described below and discussed in greater detail in the final rule establishing the time-limited tolerance associated with the emergency exemption for use of propiconazole on sorghum (61 FR 58135, November 13, 1996) (FRL–5572–9).

New section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) defines ''safe'' to mean that ''there is a

reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue....''

Section 18 of FIFRA authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that ''emergency conditions exist which require such exemption.'' This provision was not amended by FQPA. EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

Section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment.

Because decisions on section 18-related tolerances must proceed before EPA reaches closure on several policy issues relating to interpretation and implementation of the FQPA, EPA does not intend for its actions on such tolerances to set binding precedents for the application of section 408 and the new safety standard to other tolerances and exemptions.

## II. Emergency Exemption for Cyromazine on Lima Beans and Blackeye Peas and FFDCA Tolerances

Insect pressure from the leafminer has increased over the past several years due to the rapid increase in the insect's resistance to currently registered insecticides and the resulting increase in insect populations. With the end of the California drought, over wintering has occurred in leafminer populations and mild weather has added to the resistance population with outbreaks increasing in the summer and carrying through the end of the harvest season. The applicant states that in 1996 some outbreaks were so severe that several fields (both lima bean and blackeye pea) were abandoned rather than harvested.

Current alternatives for use on blackeye peas have proven ineffective and there are few registered alternatives for control of leafminer in lima beans. EPA has authorized under FIFRA section 18 the use of cyromazine on lima beans and blackeye peas for control of leafminer in California. After having reviewed these submissions, EPA concurs that emergency conditions exist for this state.

As part of its assessment of these emergency exemptions, EPA assessed the potential risks presented by residues of cyromazine in or on lima beans and blackeye peas. In doing so, EPA considered the new safety standard in FFDCA section 408(b)(2), and EPA decided that the necessary tolerances under FFDCA section 408(l)(6) would be consistent with the new safety standard and with FIFRA section 18. Consistent with the need to move quickly on the emergency exemptions in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing these tolerances without notice and opportunity for public comment under section 408(e), as provided in section 408(l)(6). Although these tolerances will expire and are revoked on December 31, 1998, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerances remaining in or on lima beans and blackeye peas after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA. EPA will take action to revoke these tolerances earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Because these tolerances are being approved under emergency conditions EPA has not made any decisions about whether cyromazine meets EPA's registration requirements for use on lima beans and blackeye peas or whether permanent tolerances for these uses would be appropriate. Under these circumstances, EPA does not believe that these tolerances serve as a basis for registration of cyromazine by a State for special local needs under FIFRA section 24(c). Nor do these tolerances serve as the basis for any State other than California to use this pesticide on these crops under section 18 of FIFRA without following all provisions of section 18 as identified in 40 CFR part 166. For additional information regarding the emergency exemptions for cyromazine, contact the Agency's Registration Division at the address provided above.

## III. Risk Assessment and Statutory Findings

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides based primarily on toxicological studies using laboratory animals. These studies address many adverse health effects, including (but not limited to) reproductive effects, developmental toxicity, toxicity to the nervous system, and carcinogenicity. Second, EPA examines exposure to the pesticide through the diet (e.g., food and drinking water) and through exposures that occur as a result of pesticide use in residential settings.

### *A. Toxicity*

1. *Threshold and non-threshold effects.* For many animal studies, a dose response relationship can be determined, which provides a dose that causes adverse effects (threshold effects) and doses causing no observed effects (the ''no-observed effect level'' or ''NOEL'').

Once a study has been evaluated and the observed effects have been determined to be threshold effects, EPA generally divides the NOEL from the study with the lowest NOEL by an uncertainty factor (usually 100 or more) to determine the Reference Dose (RfD). The RfD is a level at or below which daily aggregate exposure over a lifetime will not pose appreciable risks to human health. An uncertainty factor (sometimes called a ''safety factor'') of 100 is commonly used since it is assumed that people may be up to ten times more sensitive to pesticides than the test animals, and that one person or subgroup of the population (such as infants and children) could be up to ten times more sensitive to a pesticide than another. In addition, EPA assesses the potential risks to infants and children based on the weight of the evidence of the toxicology studies and determines whether an additional uncertainty factor is warranted. Thus, an aggregate daily exposure to a pesticide residue at or below the RfD (expressed as 100% or less of the RfD) is generally considered acceptable by EPA. EPA generally uses the RfD to evaluate the chronic risks posed by pesticide exposure. For shorter term risks, EPA calculates a margin of exposure (MOE) by dividing the estimated human exposure into the NOEL from the appropriate animal study. Commonly, EPA finds MOEs lower than 100 to be unacceptable. This 100-fold MOE is based on the same rationale as the 100-fold uncertainty factor.

Lifetime feeding studies in two species of laboratory animals are conducted to screen pesticides for cancer effects. When evidence of increased cancer is noted in these studies, the Agency conducts a weight of the evidence review of all relevant toxicological data including short-term and mutagenicity studies and structure activity relationship. Once a pesticide has been classified as a potential human carcinogen, different types of risk assessments (e.g., linear low dose extrapolations or MOE calculation based on the appropriate NOEL) will be carried out based on the nature of the carcinogenic response and the Agency's knowledge of its mode of action.

2. *Differences in toxic effect due to exposure duration.* The toxicological effects of a pesticide can vary with different exposure durations. EPA considers the entire toxicity data base, and based on the effects seen for different durations and routes of exposure, determines which risk assessments should be done to assure that the public is adequately protected from any pesticide exposure scenario. Both short and long durations of exposure are always considered. Typically, risk assessments include ''acute,'' ''short-term,'' ''intermediate term,'' and ''chronic'' risks. These assessments are defined by the Agency as follows.

Acute risk, by the Agency's definition, results from 1-day consumption of food and water, and reflects toxicity which could be expressed following a single oral exposure to the pesticide residues. High end exposure to food and water residues are typically assumed.

Short-term risk results from exposure to the pesticide for a period of 1–7 days, and therefore overlaps with the acute risk assessment. Historically, this risk assessment was intended to address primarily dermal and inhalation exposure which could result, for example, from residential pesticide applications. However, since enaction of FQPA, this assessment has been expanded to include both dietary and non-dietary sources of exposure, and will typically consider exposure from food, water, and residential uses when reliable data are available. In this assessment, risks from average food and water exposure, and high-end residential exposure, are aggregated. High-end exposures from all three sources are not typically added because of the very low probability of this occurring in most cases, and because the other conservative assumptions built into the assessment assure adequate protection of public health. However, for cases in which high-end exposure can reasonably be expected from multiple sources (e.g. frequent and widespread homeowner use in a specific geographical area), multiple high-end risks will be aggregated and presented as part of the comprehensive risk assessment/characterization. Since the toxicological endpoint considered in this assessment reflects exposure over a period of at least 7 days, an additional degree of conservatism is built into the assessment; i.e., the risk assessment nominally covers 1–7 days exposure, and the toxicological endpoint/NOEL is selected to be adequate for at least 7 days of exposure. (Toxicity results at lower levels when the dosing duration is increased.)

Intermediate-term risk results from exposure for 7 days to several months. This assessment is handled in a manner similar to the short-term risk assessment.

Chronic risk assessment describes risk which could result from several months to a lifetime of exposure. For this assessment, risks are aggregated considering average exposure from all sources for representative population subgroups including infants and children.

*B. Aggregate Exposure*

In examining aggregate exposure, FFDCA section 408 requires that EPA take into account available and reliable information concerning exposure from the pesticide residue in the food in question, residues in other foods for which there are tolerances, residues in ground water or surface water that is consumed as drinking water, and other non-occupational exposures through pesticide use in gardens, lawns, or buildings (residential and other indoor uses). Dietary exposure to residues of a pesticide in a food commodity are estimated by multiplying the average daily consumption of the food forms of that commodity by the tolerance level or the anticipated pesticide residue level. The Theoretical Maximum Residue Contribution (TMRC) is an estimate of the level of residues consumed daily if each food item contained pesticide residues equal to the tolerance. In evaluating food exposures, EPA takes into account varying consumption patterns of major identifiable subgroups of consumers, including infants and children.The TMRC is a ''worst case'' estimate since it is based on the assumptions that food contains pesticide residues at the tolerance level and that 100% of the crop is treated by pesticides that have established tolerances. If the TMRC exceeds the RfD or poses a lifetime cancer risk that is greater than approximately one in a million, EPA attempts to derive a more accurate exposure estimate for the pesticide by evaluating additional types of information (anticipated residue data and/or percent of crop treated data) which show, generally, that pesticide residues in most foods when they are eaten are well below established tolerances.

Percent of crop treated estimates are derived from Federal and private market survey data. Typically, a range of estimates are supplied and the upper end of this range is assumed for the exposure assessment. By using this upper end estimate of percent of crop treated, the Agency is reasonably certain that exposure is not understated for any significant subpopulation group. Further, regional consumption information is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups, to pesticide residues. For this pesticide, the most highly exposed population subgroup (children 1–6 years old) was not regionally based.

## IV. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of these actions, EPA has sufficient data to assess the hazards of cyromazine and to make a determination on aggregate exposure, consistent with section 408(b)(2), for time-limited tolerances for the combined residues of cyromazine and its metabolite melamine on lima beans at 5.0 ppm and blackeye peas at 5.0 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

*A. Toxicological Profile*

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk.

EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by cyromazine are discussed below.

1. *Acute toxicity.* An acute dietary risk endpoint was not identified and an acute dietary risk assessment is not required.

2. *Short—and intermediate—term toxicity.* For short-term

Margin of Exposure (MOE) calculations, the Agency used a systemic NOEL of 0.75 milligrams/kilogram/day (mg/kg/day) from a 6-month dog feeding study. At the lowest effect level (LEL) of 7.5 mg/kg/day, there were changes in hematological parameters.

3. *Chronic toxicity*. EPA has established the RfD for cyromazine at 0.0075 mg/kg/day. This RfD is based on a 6-month feeding study in the dog with a NOEL of 0.75 mg/kg/day and a LEL of 7.5 mg/kg/day based on pronounced effects on hematological parameters and an uncertainty factor of 100.

4. *Carcinogenicity*. Cyromazine has been classified as a Group

E (evidence of non-carcinogenicity for humans) chemical by the Agency's Cancer Peer Review (CPR) Committee.

*B. Exposures and Risks*

1. *From food and feed uses.* Tolerances have been established (40

CFR 180.414) for the combined residues of cyromazine, in or on a variety of raw agricultural commodities at levels ranging from 1.0 ppm in tomatoes to 10 ppm in leafy vegetables.

Currently there are tolerances for residues of cyromazine and its metabolite melamine on the meat fat and meat by-products of chickens from the use of cyromazine as a feed-through. Risk assessments were conducted by EPA to assess dietary exposures and risks from cyromazine as follows:

i. *Acute exposure and risk.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one day or single exposure. An acute dietary risk endpoint was not identified and an acute risk assessment is not required.

ii. *Chronic exposure and risk.* In conducting this chronic dietary risk assessment, EPA has made very conservative assumptions including 100% of crop treated for lima bean and blackeyed pea and most other commodities having cyromazine tolerances. The Agency used percent crop treated on such crops as tomatoes, peppers and lettuce and assumed all crops will contain cyromazine residues and those residues would be at the level of the tolerance. This will result in an overestimate of human dietary exposure. Thus, in making a safety determination for this tolerance, EPA is taking into account this conservative exposure assessment.

The existing cyromazine tolerances (published, pending, and including the necessary section 18 tolerance(s)) result in an Anticipated Residue Contribution (ARC) that is equivalent to the following percentages of the RfD:

| Subgroup | Percent |
|---|---|
| U.S. population (48 States) ..... | 34 |
| Nursing infants (<1 year old) .... | 12 |
| Non-nursing infants (<1 year old) ..... | 53 |
| Children (1–6 years old) ..... | 54 |
| Children (7–12 years old) ..... | 44 |

The subgroups listed above are: (1) the U.S. population (48 states); (2) those for infants and children; and, (3) the other subgroups for which the percentage of the RfD occupied is greater than that occupied by the subgroup U.S. population (48 states).

2. *From drinking water.* Based on information available to the

Agency, cyromazine is persistent and relatively mobile. There are no established Maximum Contaminant Levels for residues of cyromazine in drinking water. No health advisory levels for cyromazine in drinking water have been established.

*Chronic exposure and risk*. Because the Agency lacks sufficient water-related exposure data to complete a comprehensive drinking water risk assessment for many pesticides, EPA has commenced and nearly completed a process to identify a reasonable yet conservative bounding figure for the potential contribution of water-related exposure to the aggregate risk posed by a pesticide. In developing the bounding figure, EPA estimated residue levels in water for a number of specific pesticides using various data sources. The Agency then applied the estimated residue levels, in conjunction with appropriate toxicological endpoints (RfD's or acute dietary NOEL's) and assumptions about body weight and consumption, to calculate, for each pesticide, the increment of aggregate risk contributed by consumption of contaminated water. While EPA has not yet pinpointed the appropriate bounding figure for exposure from contaminated water, the ranges the Agency is continuing to examine are all below the level that would cause cyromazine to exceed the RfD if the tolerance being considered in this document were granted. The Agency has therefore concluded that the potential exposures associated with cyromazine in water, even at the higher levels the Agency is considering as a conservative upper bound, would not prevent the Agency from determining that there is a reasonable certainty of no harm if the tolerance is granted.

3. *From non-dietary exposure.* Cyromazine is not registered for use on residential non-food sites.

4. *Cumulative exposure to substances with common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.'' The Agency believes that ''available information'' in this context might include not only toxicity, chemistry, and exposure data, but also scientific policies and methodologies for understanding common mechanisms of toxicity and conducting cumulative risk assessments. For most pesticides, although the Agency has some information in its files that may turn out to be helpful in eventually determining whether a pesticide shares a common mechanism of toxicity with any other substances, EPA does not at this time have the methodologies to resolve the complex scientific issues concerning common mechanism of toxicity in a meaningful way. EPA has begun a pilot process to study this issue further through the examination of particular classes of pesticides. The Agency hopes that the results of this pilot process will increase the Agency's scientific understanding of this question such that EPA will be able to develop and apply scientific principles for better determining which chemicals have a common mechanism of toxicity and evaluating the cumulative effects of such chemicals. The Agency anticipates, however, that even as its understanding of the science of common mechanisms increases, decisions on specific classes of chemicals will be heavily dependent on chemical specific data, much of which may not be presently available.

Although at present the Agency does not know how to apply the information in its files concerning common mechanism issues to most risk assessments, there are pesticides as to which the common mechanism issues can be resolved. These pesticides include pesticides that are toxicologically dissimilar to existing chemical substances (in which case the Agency can conclude that it is unlikely that a pesticide shares a common mechanism of activity with other substances) and pesticides that produce a common toxic metabolite (in which case common mechanism of activity will be assumed).

EPA does not have, at this time, available data to determine whether cyromazine has a common mechanism

of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, cyromazine does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that cyromazine has a common mechanism of toxicity with other substances.

*C. Aggregate Risks and Determination of Safety for U.S. Population*

*Chronic risk.* Using the conservative ARC exposure assumptions described in Unit IV.B.1.ii. of this preamble, and taking into account the completeness and reliability of the toxicity data, EPA has calculated that dietary exposure to cyromazine from food will utilize 34% of the RfD for the U.S. population. The Agency generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to cyromazine in drinking water, EPA does not expect the aggregate exposure to exceed 100% of the RfD. Under current Agency guidelines, the registered non-dietary uses of cyromazine do not constitute a chronic exposure scenario. The Agency concludes that there is a reasonable certainty that no harm will result from chronic aggregate exposure to cyromazine residues.

*D. Endocrine Disrupter Effects*

EPA is required to develop a screening program to determine whether certain substances (including all pesticides and inerts) ''may have an effect in humans that is similar to an effect produced by a naturally occurring estrogen, or such other endocrine effect....'' The Agency is currently working with interested stakeholders, including other government agencies, public interest groups, industry and research scientists in developing a screening and testing program and a priority setting scheme to implement this program.

Congress has allowed 3 years from the passage of FQPA (August 3, 1999) to implement this program. At that time, EPA may require further testing of this active ingredient and end use products for endocrine disrupter effects.

*E. Aggregate Risks and Determination of Safety for Infants and Children*

1. *Safety factor for infants and children*— i. *In general.* In assessing the potential for additional sensitivity of infants and children to residues of cyromazine, EPA considered data from developmental toxicity studies in the rat and rabbit and a two-generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from pesticide exposure during prenatal development to one or both parents. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for pre-and post-natal toxicity and the completeness of the database unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. EPA believes that reliable data support using the standard MOE and uncertainty factor (usually 100 for combined inter-and intra-species variability) and not the additional tenfold MOE/uncertainty factor when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard MOE/safety factor.

ii. *Developmental toxicity studies.* From the rat developmental study, the maternal (systemic) NOEL was 100 mg/kg/day, based on increased incidence of clinical signs and decreased body weight at the lowest observed effect level (LOEL) of 300 mg/kg/day. The developmental (pup) NOEL was 300 mg/kg/day, based on increased incidence of skeletal variations at the LOEL of 600 mg/kg/day.

From the rabbit developmental study, the maternal (systemic) NOEL was 10 mg/kg/day, based on decreased weight gain and food consumption at the LOEL of 30 mg/kg/day. The developmental (pup) NOEL was 60 mg/kg/day, the highest dose tested (HDT).

iii. *Reproductive toxicity study.* From the rat reproduction study, the maternal (systemic) NOEL was 50 mg/kg/day, based on body weight loss at the LOEL of 150 mg/kg/day. The reproductive/developmental (pup) NOEL was 50 mg/kg/day, based on decreased pup growth, decreased number of pups per litter, and increased fetotoxicity at the LEL of 150 mg/kg/day.

iv. *Pre-and post-natal sensitivity.* The toxicological data base for evaluating pre-and post-natal toxicity for cyromazine is complete with respect to current data requirements. There are no pre-or post-natal toxicity concerns for infants and children, based on the results of the rat and rabbit developmental toxicity studies and the 2-generation rat reproductive toxicity study.

v. *Conclusion.* The Agency concludes that reliable data support use of the standard 100-fold margin of exposure/uncertainty factor and that an additional margin/factor is not needed to protect infants and children.

2. *Chronic risk.* Using the conservative exposure assumptions described in Unit IV.B.1.ii. of this preamble, EPA has concluded that the percentage of the RfD that will be utilized by dietary (food) exposure to residues of cyromazine ranges from 53% for non-nursing infants less than one year old, up to 54% for children 1–6 years old. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to cyromazine in drinking water and from non-dietary, non-occupational exposure, EPA does not expect the aggregate exposure to exceed 100% of the RfD. EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to cyromazine residues.

## V. Other Considerations

*A. Metabolism In Plants and Animals*

The nature of the residue in plants and animals is adequately understood.

The residue of concern is parent cyromazine and the metabolite melamine as specified in 40 CFR 180.414.

*B. Analytical Enforcement Methodology*

Adequate enforcement methodology for crops (HPLC with UV detector) is available in PAM II to enforce the tolerance expression.

*C. Magnitude of Residues*

Residues of cyromazine and its metabolite melamine are not expected to exceed 5.0 ppm in/on either lima beans or blackeyed peas as a result of this section 18 use. Secondary residues in animal commodities are not expected to exceed existing tolerances as a result of this section 18 use.

*D. International Residue Limits*

There are no CODEX, Canadian, or Mexican MRL's for cyromazine on lima beans or blackeyed peas.

*E. Rotational Crop Restrictions*

Crops with permitted uses on the federal label may be planted as rotational crops, additionally sweet corn and radishes may be planted as rotational crops 3 months after the last application to beans.

**VI. Conclusion**

Therefore, the tolerance is established for combined residues of cyromazine in lima beans at 5.0 ppm and blackeye peas at 5.0 ppm.

**VII. Objections and Hearing Requests**

The new FFDCA section 408(g) provides essentially the same process for persons to ''object'' to a tolerance regulation issued by EPA under new section 408(e) and (l)(6) as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by February 9, 1998, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

**VIII. Public Docket**

EPA has established a record for this rulemaking under docket control number [OPP–300588] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall 2, 1921 Jefferson Davis Hwy., Arlington, VA.

Electronic comments may be sent directly to EPA at:

opp-docket@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the Virginia address in **''ADDRESSES''** at the beginning of this document.

**IX. Regulatory Assessment Requirements**

This final rule establishes tolerances under FFDCA section 408(l)(6). The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Nor does it require any prior consultation as specified by Executive Order 12875, entitled Enhancing the Intergovernmental Partnership (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997).

In addition, since these tolerances and exemptions that are established under FFDCA section 408 (l)(6), such as the tolerances in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency has previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

**X. Submission to Congress and the General Accounting Office**

Under 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, the Agency has submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of this rule in today's **Federal Register**. This is not a ''major rule'' as defined by 5 U.S.C. 804(2).

**List of Subjects in 40 CFR Part 180**

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: November 25, 1997.

**Peter Caulkins,**

*Acting Director, Registration Division, Office of Pesticide Programs.*

Therefore, 40 CFR chapter I is amended as follows:

## PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

**Authority:** 21 U.S.C. 346a and 371.

2. In § 180.414, in paragraph (b) by alphabetically adding the following commodities to the table to read as follows:

**§ 180.414 Cyromazine; tolerances for residues.**

* * * * *

(b) * * *

| Commodity | Parts per million | Expiration/revocation date |
|---|---|---|
| Beans, lima | 5.0 | 12/31/98 |
| * * | * * | * * * |
| Peas, blackeyed | 5.0 | 12/31/98 |
| * * | * * | * * * |

* * * * *

[FR Doc. 97–32039 Filed 12–9–97; 8:45 am]

BILLING CODE 6560–50–F

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 54

**[CC Docket No. 96–45, CC 97–21; FCC 97–400]**

### Universal Service Support Mechanisms

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission authorized the Administrator of the universal service support mechanisms to require payment of quarterly contributions to universal service in equal monthly installments. Allowing monthly payments will reduce the cash flow impact on contributors because their payments will be smaller. It also will better enable contributors to offset their contributions by payments from the support mechanisms. It will not jeopardize the sufficiency of the support mechanisms.

**EFFECTIVE DATE:** January 9, 1998.

**FOR FURTHER INFORMATION CONTACT:** Diane Law, (202) 418–7400.

**SUPPLEMENTARY INFORMATION:**

**SECOND ORDER ON RECONSIDERATION** in CC Docket No. 97–21

### I. Background

1. In the *Universal Service Order,* the Commission created new federal universal service support mechanisms and concluded that all telecommunications carriers that provide interstate telecommunications services, other providers of interstate telecommunications, and payphone service providers will contribute to universal service. (*See* Federal-State Joint Board on Universal Service, *Report and Order,* CC Docket No. 96–45, FCC 97–157, 62 FR 32862 (June 17, 1997)). In the *NECA Report and Order,* the Commission instructed the National Exchange Carrier Association (NECA) to create an independent subsidiary, the Universal Service Administrative Company (USAC or Administrator), to administer temporarily portions of the universal service support mechanisms. (*See* Changes to the Board of Directors of the National Exchange Carriers Association, Inc., Federal-State Joint Board on Universal Service, *Report and Order and Second Order on Reconsideration,* CC Docket No. 97–21, CC Docket No. 96–45, FCC 97–253, 62 FR 41294 (August 1, 1997)). The Commission also instructed the Administrator to bill contributors and collect contributions to the federal universal service support mechanisms on a quarterly basis.

2. USAC requests that it be authorized to collect universal service contributions on a monthly, as opposed to a quarterly, basis. USAC states that collecting contributions on a quarterly basis may create significant cash flow problems for contributors. USAC explains that, because of the delay between funds collection and funds distribution, monthly billing will not increase the likelihood that the Administrator will be required to borrow money to fund early requests for discounts by eligible schools and libraries. In addition, USAC notes that collecting contributions on a monthly basis will generate some interest income, albeit less than would be collected on a quarterly basis, that can be applied to meet program demands. NECA supports USAC's request.

### II. Discussion

3. Based on the Administrator's request, we reconsider, on our own motion, our requirement that the Administrator collect contributions on a quarterly basis. Allowing monthly payments would reduce the cash flow impact on contributors because their payments would be smaller. It also would better enable contributors to offset their contributions by payments from the support mechanisms. We conclude that permitting monthly as opposed to quarterly contributions will not jeopardize the sufficiency of the support mechanisms. The Commission reduced the estimated total contribution base by two percent when calculating the universal service contribution factors to take account of the possibility that contributions to the support mechanisms may fall short of estimated levels due to, for example, uncollectibles or higher-than-foreseen demand. In addition, since March 20, 1998 appears to be the earliest date on which the Administrator could be required to make distributions under the schools, libraries, and rural health care programs,[1] we anticipate that, under our

[1] We calculate that March 20, 1998 reflects the earliest date on which the Administrator will distribute funds under these programs, by starting with November 24, 1997 and adding to it a 75-day

revised billing schedule, the Administrator will have sufficient funds to meet initial demand for support for these and all other service programs. USAC has not requested that we revise the manner in which the amount of each contributor's obligation is determined and we see no reason to do so. Thus, as provided in § 54.709 of the Commission's current rules, the Administrator will apply the quarterly contribution factors to determine the amount that contributors must remit to the Administrator. We amend § 54.709 of our rules to authorize the Administrator to require payment of those quarterly contributions in equal monthly installments.

4. We understand that USAC intended to begin sending out bills in December, 1997, which would require contributors to begin making payments in January, 1998. We find that both USAC and contributors need a reasonable opportunity to respond to the modification from a quarterly to a monthly billing schedule. We therefore direct USAC not to require contributors to make payments pursuant to the new universal service mechanisms set forth in section 254 prior to February 1998. This will provide USAC additional time to issue bills that are consistent with the billing modification set forth herein. The additional time will not delay disbursement of funds pursuant to the new universal service mechanisms, because distribution of funds pursuant to the schools and libraries and rural health care universal service programs will not begin before March 20, 1998 and distributions for the new high cost and low income universal service programs will not begin until February 1998.

## III. Supplemental Final Regulatory Flexibility Analysis

5. As required by Section 603 of the Regulatory Flexibility Act (RFA), 5 U.S.C. 603, an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Notice of Proposed Rulemaking and Order Establishing Joint Board (NPRM). In addition, the Commission prepared an IRFA in connection with the Recommended Decision, seeking written public comment on the proposals in the NPRM and Recommended Decision. A Final Regulatory Flexibility Analysis (FRFA) was also included in the *Order.* The Commission's Supplemental Final Regulatory Flexibility Analysis (SFRFA) in this Order conforms to the RFA, as amended.

### *A. Need for and Objectives of This Report and Order and the Rules Adopted Herein*

6. The Commission is required by section 254 of the Act, as amended by the 1996 Act, to promulgate rules to implement promptly the universal service provisions of section 254. On May 8, 1997, the Commission adopted rules whose principle goal is to reform our system of universal service support mechanisms so that universal service is preserved and advanced as markets move toward competition. In this Order, we reconsider one aspect of those rules. Our reconsideration was prompted by *ex parte* letters filed by USAC and NECA suggesting that contributions to the universal service support mechanisms be collected on a monthly, rather than the quarterly basis currently specified in our rules. In addition, on our own motion, we adopt a rule in order to give contributors and USAC a reasonable opportunity to respond to the billing modification.

### *B. Summary and Analysis of the Significant Issues Raised by Public Comments in Response to the IRFA*

7. Other than those described in the *Order,* no additional comments were filed in response to the IRFAs described above. Nor were any comments filed in response to the *ex parte* letters from the Administrator and NECA.

### *C. Description and Estimates of the Number of Small Entities to Which the Rules Adopted in This Report and Order Will Apply*

8. In the FRFA at paragraphs 890–922 of the *Order,* we described and estimated the number of small entities that would be affected by the new universal service rules. The rule adopted here will apply to the same telecommunications carriers and entities affected by the universal service rules. We therefore adopt the provisions of paragraphs 890–922 of the *Order.*

### *D. Summary Analysis of the Projected Reporting, Recordkeeping, and Other Compliance Requirements and Significant Alternatives and Steps Taken to Minimize the Significant Economic Impact on a Substantial Number of Small Entities Consistent with Stated Objectives*

9. In the FRFA to the *Order,* we described the projected reporting, recordkeeping, and other compliance requirements and significant alternatives and steps taken to minimize significant economic impact on a substantial number of small entities consistent with stated objectives associated with the Administration section of the *Order.* Because the rule adopted herein will only marginally affect those requirements, we adopt the provisions of paragraphs 980–981 of the *Order,* which describe those requirements and provide the following analysis of the new requirements adopted herein. Under the rule adopted herein, telecommunications carriers and providers must submit their quarterly contributions on a monthly basis. Although monthly contributions may slightly increase the paperwork burdens imposed on small entities, this payment scheme may reduce their cash flow burdens and thus provides an offsetting benefit. We also adopt a rule herein to provide contributors, including small entities, a reasonable opportunity to respond to the billing change.

## IV. Ordering Clauses

10. Accordingly, *It is ordered* that, pursuant to the authority contained in sections 1–4, 201–205, 254, and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 151–154, 201–205, 254, and 405, § 1.108 of the Commission's rules, 47 CFR 1.108, and section 553 of the Administrative Procedure Act, 5 U.S.C. 553, this Order is adopted, effective 30 days from publication of the text in the **Federal Register**.

11. *It is further ordered* that part 54 of the Commission's rules, 47 CFR 54.709, is amended, effective January 9, 1998.

### List of Subjects in 47 CFR Part 54

Communications common carriers, Health facilities, Libraries, Reporting and recordkeeping requirements, Schools, Telecommunications, Telephone.

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period and two 20-day periods, derived from the requirements described below. The Schools and Libraries and Rural Health Corporations must authorize USAC to disburse the appropriate payment amounts as quickly as possible, but no later than 20 days following receipt of the requisite forms. USAC must distribute payments as quickly as possible, but no later than 20 days following receipt of authorization to disburse funds. In addition, the Schools and Libraries and Rural Health Care Corporations established 75-day window filing periods in which all requests will be treated with equal priority. The window period will begin to run when the Schools and Libraries and Rural Health Care Corporations begin to receive applications for support. Funds will not be committed until the closing of the 75-day window filing period. Thus, even assuming the window period were to begin on November 24, 1997, support would not begin to be distributed before March 20, 1998.

Federal Communications Commission.

**Magalie Roman Salas,**

*Secretary.*

## Rule Changes

Part 54 of title 47 of the Code of Federal Regulations is amended as follows:

## PART 54—UNIVERSAL SERVICE

1. The authority citation for part 54 continues to read as follows:

**Authority:** 47 U.S.C. 1, 4(i), 201, 205, 214, and 254 unless otherwise noted.

2. Section 54.709 is amended by revising paragraph (a)(4) and adding a new paragraph (a)(5) to read as follows:

### § 54.709 Computations of required contributions to universal service support mechanisms.

(a) * * *

(4) For each quarter, the Administrator shall bill contributors monthly and require payment of contributions in equal monthly installments.

(5) The Administrator shall not require contributors to make payments pursuant to the universal service mechanisms set forth in 47 U.S.C. 254 prior to February 1998.

* * * * *

[FR Doc. 97–32178 Filed 12–9–97; 8:45 am]

BILLING CODE 6712–01–P

# Proposed Rules

**Federal Register**

Vol. 62, No. 237

Wednesday, December 10, 1997

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Part 40

**[Docket No. PRM–40–26]**

### Chromalloy Tallahassee; Receipt of Petition for Rulemaking

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Petition for rulemaking; notice of receipt.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is publishing for public comment a notice of receipt of a petition for rulemaking, dated July 17, 1997, which was filed with the Commission by Chromalloy Tallahassee. The petition was docketed by the NRC on September 11, 1997, and has been assigned Docket No. PRM–40–26. The petitioner requests that the NRC amend its licensing exemptions to establish an exemption from licensing requirements to include the M1A1 Battle Tank Engine AGT 1500 which contains nickel-thorium.

**DATES:** Submit comments by February 23, 1998. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

**ADDRESSES:** Submit written comments to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff. Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland, between 7:45 a.m. and 4:15 p.m. Federal workdays.

For a copy of the petition, write the Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

The petition and copies of comments received may be inspected and copied for a fee at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** David L. Meyer, Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Telephone: 301–415–7162 or Toll Free: 800–368–5642.

**SUPPLEMENTARY INFORMATION:**

#### The Petitioner

The petitioner, Chromalloy Tallahassee (Chromalloy) is a Federal Aviation Administration approved Overhaul & Repair facility located in Florida, which is an NRC Agreement State. Chromalloy overhauls and repairs jet engine combustors, one of which has a component, specifically the JT9D jet engine, that falls under the exemption from licensing found in 10 CFR 40.13(c)(8), as adopted by the State of Florida at Subsection 10D–91.302(3) of the Florida Administrative Code.

#### Background

The petitioner is interested in developing a repair for the M1A1 ABRAMS Main Battle Tank. The M1A1 ABRAMS Main Battle Tank is driven by the AGT 1500 Gas Turbine Engine. The hot section or combustor of the AGT 1500 is made up of 15 splash rings and 15 fuel nozzles all of which are nickel-thoria alloy. The thorium content of the nickel-thoria alloy in the splash rings and fuel nozzles contain less than 2% by weight and the thorium is dispersed in the nickel-thoria alloy in the form of finely divided thoria (thorium dioxide). The petitioner stated that the splash rings and the fuel nozzles meet all the technical requirements of the current exemption, except that the exemption is limited to finished aircraft engine parts.

The NRC's current regulations state:

**§ 40.13 Unimportant quantities of source material.**

* * * * *

(c) Any person is exempt from the regulation in this part and from the requirements for a license set forth in section 62 of the Act to the extent that such person receives, possesses, uses, or transfers:

* * * * *

(8) Thorium contained in any finished aircraft engine part containing nickel-thoria alloy. *Provided*, That:

(i) The thorium is dispersed in the nickel-thoria alloy in the form of finely divided thoria (thorium dioxide); and

(ii) The thorium content in the nickel-thoria alloy does not exceed 4 percent by weight.

* * * * *

#### The Petition

The petitioner requests that the NRC amend its regulations in § 40.13(c)(8) to establish an exemption from licensing requirements to include the M1A1 Battle Tank Engine AGT 1500 which contains nickel-thorium.

Because the petitioner is located in an NRC Agreement State, it requested that the Florida Department of Health grant an interpretation of the current exemption to include the M1A1 ABRAMS Main Battle Tank Engine. The petitioner stated that the Florida Department of Health would not grant its request and advised the petitioner that Florida Department of Health was under the impression that the NRC was reevaluating the NRC's position on the nickel-thorium exemption.

In support of its petition, Chromalloy has referenced a petition for rulemaking submitted to the NRC by E. I. du Pont de Nemours & Company (PRM–40–6) dated February 13, 1963, that requested the Commission's regulations be amended to establish an exemption from licensing requirements for persons receiving, possessing, using, transferring or importing into the United States any finished products or part fabricated of, or containing nickel-thorium alloys containing up to 4 percent thorium by weight. The petitioner pointed out that the NRC's response had been:

> The Commission has found that the possession and use in the United States of thorium contained in thorium metal alloys in which the thorium does not exceed 4 percent by weight is not of significance to the common defense and security, and that such activities can be conducted without unreasonable hazard to life or property.

The proposed exemption was for ''any finished product or part;'' nowhere in PRM–40–6 do the words ''aircraft engine parts'' appear.

The petitioner stated that the final exemption was not published until November 18, 1967 (32 FR 15872) and that the expression ''jet aircraft engines'' is mentioned for the first time in that notice.

After consulting with the NRC, the petitioner believes that the material

used for the experimental test for the final exemption must have been from jet aircraft engines, which at this stage in the development and use of nickel-thoria components in engines was the only application. This is possibly the reason that the exemption specifies only jet aircraft engines. The M1A1 Battle Tank Engine AGT 1500 was not developed until after 1967. The M1A1 Battle Tank Engine AGT 1500 contains the same nickel-thoria alloy as is contained in the JT9D jet engine. The petitioner also has pointed out that the material in the M1A1 Battle Tank Engine AGT 1500 would produce the same results if put to the same experimental tests the Commission conducted in 1963–1967.

In support it its petition, Chromalloy asserts that the NRC considers that jet aircraft engine products are not intended for public use, and cites a **Federal Register** notice published by the Atomic Energy Commission on November 18, 1967 (32 FR 15872) as a basis for this assertion:

> The Commission considers that finished aircraft engine parts containing nickel-thoria alloy are not products intended for use by the general public within the purview of § 150.15(a)(6) of 10 CFR Part 150, ''Exemptions and Continued Regulatory Authority in Agreement States Under Section 274.'' Accordingly, the transfer of possession or control of such finished aircraft engine parts in Agreement States by the manufacturer, processor, or producer would not be regulated by the Commission.

Finally, the petitioner asserts that if the Commission does not view the presence of nickel-thoria in jet aircraft engines to be unsafe to the public, then the presence of nickel-thoria in tank engines should be reviewed in the same light because the public's exposure to battle tank engines is far less than the public's exposure to aircraft engines. Therefore, the petitioner believes that the exemption must apply to both the JT9D aircraft and the M1A1 AGT 1500 battle tank gas turbine engine.

Dated at Rockville, Maryland, this 3rd day of December, 1997.

For the Nuclear Regulatory Commission.

**John C. Hoyle,**

*Secretary of the Commission.*

[FR Doc. 97–32273 Filed 12–9–97; 8:45 am]

**BILLING CODE 7590–01–P**

## FEDERAL ELECTION COMMISSION

**[Notice 1997–17]**

## 11 CFR Part 114

## Qualified Nonprofit Corporations

**AGENCY:** Federal Election Commission.

**ACTION:** Rulemaking petition: notice of availability.

**SUMMARY:** On November 17, 1997, the Commission received a Petition for Rulemaking from the James Madison Center for Free Speech urging the Commission to begin a rulemaking proceeding to conform portions of its regulations to a decision of the United States Court of Appeals for the Eighth Circuit. These regulations set forth the scope of the exemption from the prohibition on corporate independent expenditures for a narrow class of non-profit ideological corporations. The petition is available for inspection in the Commission's Public Records Office.

**DATES:** Statements in support of or in opposition to the petition must be filed on or before January 23, 1998.

**ADDRESSES:** All comments should be addressed to Susan E. Propper, Assistant General Counsel, and must be submitted in either written or electronic form. Written comments should be sent to the Federal Election Commission, 999 E Street, N.W., Washington, DC 20463. Faxed comments should be sent to (202) 219–3923, with printed copy follow up. Electronic mail comments should be sent to qncpetition@fec.gov. Commenters sending comments by electronic mail should include their full name and postal service address within the text of their comments. Electronic mail comments that do not contain the full name, electronic mail address and postal service address of the commenter will not be considered.

**FOR FURTHER INFORMATION CONTACT:** Ms. Susan E. Propper, Assistant General Counsel, or Paul Sanford, Staff Attorney, 999 E Street, N.W., Washington, D.C. 20463, (202) 219–3690 or (800) 424–9530.

**SUPPLEMENTARY INFORMATION:** On November 17, 1997, the Commission received a Petition for Rulemaking from the James Madison Center for Free Speech requesting that the Commission institute a rulemaking proceeding to conform its regulations at 11 CFR 114.10 to the decision of the United States Court of Appeals for the Eighth Circuit in *Minnesota Citizens Concerned for Life* v. *Federal Election Commission*, 113 F.3d 129 (8th Cir. 1997). These regulations describe a category of nonprofit corporations that are exempt from the prohibition on independent expenditures in 2 U.S.C. § 441b. *See also* 11 CFR 114.2.

Copies of the petition are available for public inspection in the Commission's Public Records Office, 999 E Street, N.W., Washington, DC 20463, Monday through Friday between the hours of 9:00 a.m. and 5:00 p.m. Copies of the petition can also be obtained at any time of the day and week from the Commission's home page at www.fec.gov, or from the Commission's FAXline service. To obtain copies of the petition from FAXline, dial (202) 501–3413 and follow the FAXline service instructions. Request document #233 to receive the petition.

Members of the public are invited to comment on the petition. All statements in support of or in opposition to the petition should be addressed to Susan E. Propper, Assistant General Counsel, and must be submitted in either written or electronic form. Written comments should be sent to the Commission's postal service address: Federal Election Commission, 999 E Street, N.W., Washington, DC 20463. Faxed comments should be sent to (202) 219–3923. Commenters submitting faxed comments should also submit a printed copy to the Commission's postal service address to ensure legibility. Comments may also be sent by electronic mail to qncpetition@fec.gov. Commenters sending comments by electronic mail should include their full name, electronic mail address and postal service address within the text of their comments. Electronic mail comments that do not contain the full name, electronic mail address and postal service address of the commenter will not be considered. All comments, regardless of form, must be submitted by January 23, 1998.

Consideration of the merits of the petition will be deferred until the close of the comment period. If the Commission decides that the petition has merit, it may begin a rulemaking proceeding. Any subsequent action taken by the Commission will be announced in the **Federal Register**.

Dated: December 5, 1997.

**John Warren McGarry,**

*Chairman, Federal Election Commission.*

[FR Doc. 97–32287 Filed 12–9–97; 8:45 am]

**BILLING CODE 6715–01–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Airspace Docket No. 97–AEA–44]**

## Proposed Amendment to Class E Airspace; Ravenswood, WV

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice proposes to amend the Class E airspace area at Ravenswood, WV. The development of new Standard Instrument Approach Procedures (SIAP) based on the Global Positioning System (GPS) at Jackson-County Airport has made this proposal necessary. Additional controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate the SIAPs and for Instrument Flight Rules (IFR) operations at the airport.

**DATES:** Comments must be received on or before January 9, 1998.

**ADDRESSES:** Send comments on the proposal in triplicate to: Manager, Airspace Branch, AEA–520, Docket No. 97–AEA–44, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy Int'l Airport, Jamaica, NY 11430.

The official docket may be examined in the Office of the Regional Counsel, AEA–7, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430.

An informal docket may also be examined during normal business hours in the Airspace Branch, AEA–520, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430.

**FOR FURTHER INFORMATION CONTACT:** Mr. Francis T. Jordan, Jr., Airspace Specialist, Airspace Branch, AEA–520, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone: (718) 553–4521.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 97–AEA–44.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with the FAA personnel concerned with this rulemaking will be filed in the docket.

### Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Office of the Regional Counsel, AEA–7, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

### The Proposal

The FAA is considering an amendment to 14 CFR part 71 to amend the Class E airspace area at Ravenswood, WV. A GPS Runway (RWY) 22 SIAP, and a GPS RWY 4 SIAP have been developed for the Jackson County Airport. Additional controlled airspace extending upward from 700 feet AGL is needed to accommodate the SIAPs and for IFR operations at the airport. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface are published in Paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that would only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

### List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

### The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

## PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40120; E.O. 10854; 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

**§ 71.1 [Amended]**

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

*Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.*

* * * * *

**AEA WV E5 Ravenswood, WV [Revised]**

Jackson County Airport, Ravenswood, WV
(lat. 38°55′47″N., long. 81°49′10″W.)

That airspace extending upward from 700 feet above the surface within a 11-mile radius of Jackson County Airport, excluding that portion that coincides with the Point Pleasant, WV, and Gallipolis, OH, Class E airspace areas.

* * * * *

Issued in Jamaica, New York, on November 19, 1997.

**James K. Buckles,**

*Acting Manager, Air Traffic Division, Eastern Region.*

[FR Doc. 97–32349 Filed 12–9–97; 8:45 am]

BILLING CODE 4910–13–M

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Airspace Docket No. 97–AGL–51]**

## Proposed Establishment of Class E Airspace; Friendship (Adams), WI

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice proposes to establish Class E airspace at Friendship

(Adams), WI. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway 33 has been developed for Adams County Legion Field Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) within a 9.4-mile radius of the airport is needed to contain aircraft executing the approach.

**DATES:** Comments must be received on or before January 12, 1998.

**ADDRESSES:** Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 97–AGL–51, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Operations Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

**FOR FURTHER INFORMATION CONTACT:** Michell M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 97–AGL–51.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

**Availability of NPRM's**

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, S.W., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

**The Proposal**

The FAA is considering an amendment to 14 CFR part 71 to establish Class E airspace at Friendship (Adams), WI, to accommodate aircraft executing the GPS Runway 33 SIAP for Adams County Legion Field Airport. Controlled airspace extending upward from 700 to 1200 feet AGL within a 9.4 mile radius is needed to contain aircraft executing the approach. The area would be depicted on appropriate aeronautical charts. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this, proposed regulation(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (air).

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

## PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

**§ 71.1 [Amended]**

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

*Paragraph 6005 Class E Airspace Areas Extending Upward from 700 feet Or More Above the Surface of the Earth*

* * * * *

**AGL WI E5 Friendship (Adams), WI [New]**

Adams County Legion Field Airport, WI
(lat. 43°57′40″N, long. 89°47′17″W)

That airspace extending upward from 700 feet above the surface within a 9.4-mile radius of the Adams County Legion Field Airport, excluding that portion within the Necedah, WI, and New Lisbon, WI, Class E airspace areas.

* * * * *

Issued in Des Plaines, Illinois on November 12, 1997.

**David B. Johnson,**

*Assistant Manager, Air Traffic Division.*

[FR Doc. 97–32350 Filed 12–9–97; 8:45 am]

**BILLING CODE 4910–13–M**

**DEPARTMENT OF COMMERCE**

**Bureau of Economic Analysis**

**15 CFR Part 806**

**[Docket No. 971110266–7266–01]**

**RIN 0691–AA31**

## Direct Investment Surveys: Raising Exemption Level for Two Surveys of Foreign Direct Investment in the United States

**AGENCY:** Bureau of Economic Analysis, Commerce.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This document sets forth proposed rules to amend 15 CFR 806.15 by raising the exemption level for reporting in two surveys of foreign direct investment in the United States: raise the exemption level for Forms BE–605 and BE–605 Bank to $30 million from $20 million; and raise the exemption level for Forms BE–13 and BE–14 to $3 million from $1 million.

The purpose of these changes is to bring the surveys into conformity with the proposed design of the BE–12, Benchmark Survey of Foreign Direct Investment in the United States—1997. It is expected that the changes will effect a reduction in the number of reports filed by U.S. affiliates of foreign persons and thereby reduce reporting burden. BEA is proposing other changes to the surveys that do not require a change in the rule, and that may increase the reporting burden slightly for the BE–605 survey, thereby offsetting a portion of the reduction in burden that results from raising the exemption level.

**DATES:** Comments on the proposed rules will receive consideration if submitted in writing on or before January 26, 1998.

**ADDRESSES:** Comments may be mailed to the Office of the Chief, International Investment Division (BE–50), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230, or hand delivered to Room M–100, 1441 L Street NW., Washington, DC 20005. Comments received will be available for public inspection in Room 7006, 1441 L Street NW., between 8:30 a.m. and 4:30 p.m., Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** R. David Belli, Chief, International Investment Division (BE–50), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230; phone 202–606–9800.

**SUPPLEMENTARY INFORMATION:** The two surveys affected by these changes are part of the Bureau of Economic Analysis (BEA) data collection program for foreign direct investment in the United States. The surveys, the BE–605, Transactions of U.S. Affiliate, Except a U.S. Banking Affiliate, with Foreign Parent, together with the BE–605 Bank, Transactions of U.S. Banking Affiliate with Foreign Parent, and the BE–13, Initial Report on a Foreign Person's Direct or Indirect Acquisition, Establishment, or Purchase of the Operating Assets, of a U.S. Business Enterprise, Including Real Estate, together with BE–14, Report by a U.S. Person Who Assists or Intervenes in the Acquisition of a U.S. Business Enterprise by, or Who Enters Into a Joint Venture with, a Foreign Person, are mandatory and are conducted pursuant to the International Investment and Trade in Services Survey Act (22 U.S.C. 3101–3108, as amended).

The proposed changes will bring reporting by U.S. affiliates on the BE–605 quarterly survey, the first of the two surveys, into conformity with their reporting on the proposed BE–12, Benchmark Survey of Foreign Direct Investment in the United States—1997. The BE–12 is BEA's quinquennial census of foreign direct investment in the United States; it collects annual data and is intended to cover the universe of U.S. affiliates. (A U.S. affiliate is a U.S. business enterprise in which a foreign person owns or controls ten percent or more of the voting stock, or an equivalent interest in an unincorporated business enterprise.) The BE–605 is a sample survey covering only larger U.S. affiliates. The sample data reported in the BE–605 survey will be linked to data from the BE–12 benchmark survey in order to derive universe estimates by quarter for benchmark and nonbenchmark years. Under this proposed rule, the exemption level for the BE–605 survey will be raised from more than $20 million to more than $30 million of assets, sales, or net income. The proposed level of $30 million is the same as that proposed to be used in the BE–12 Benchmark Survey of Foreign Direct Investment in the United States—1997, to determine whether reporting companies are required to provide similar balance of payments data on the BE–12(SF) short form. Below the $30 million threshold, companies reporting on the BE–12 do not provide these data.

In addition to raising the exemption level, BEA is proposing one other change to the BE–605 survey form. Specifically, it is proposing that trade in services between U.S. affiliates and their foreign parents be reported once each year by type of service, similar to reporting on the proposed BE–12 benchmark survey. This change is necessary to bring the data collected on foreign direct investment in the United States into conformity with those collected on U.S. direct investment abroad data and also with current international guidelines for the compilation of balance of payments accounts. Currently BEA can only provide detail by type of service for unaffiliated, but not affiliated, transactions for foreign direct investment in the United States. However, this addition does not require a rule change and is indicated here only for information. The revised BE–605 and BE–605 Bank forms would be required to be filed beginning with the report for the first calendar quarter of 1998.

For the BE–605 survey, an increase in the reporting burden due to adding the requirement to provide information on services transactions by type of service has been kept to a minimum by requesting that the added information be reported only once each year. Many respondents do not have transactions in services and will not have to file the added information; those that do will only be required to provide it once each year, along with other data that are already required to be filed annually following the end of their fiscal year. In order to allow for respondents' review of the additional instructions and the provision of the information that will be required only on an annual basis, the average burden was increased by one-fourth of an hour (1 hour for one of the four quarters for which reports will be filed). The reporting changes will only affect the BE–605 and not the BE–605 Bank form and are the minimum necessary to maintain consistency with the benchmark survey. However, because of raising the reporting threshold to $30 million from $20 million, BEA estimates that 650 companies, or 14 percent of potential respondents, will drop out of the reporting sample, thus reducing the increased burden associated with reporting services transactions by type.

The second of the two surveys affected by these rules changes is the BE–13 new investment survey. In the proposed 1997 BE–12 benchmark survey, the reporting threshold is raised to over $3 million from over $1 million of assets, sales, or net income in the previous benchmark survey. Accordingly, BEA proposes to raise the threshold for reporting on the BE–13 new investment survey (measured by the acquired or established U.S. company's total assets) to $3 million to correspond to the initial reporting level on the BE–12. For both surveys, the BE–13 and BE–12, only an exemption claim must be filed for companies below the $3 million level, thereby reducing

respondent burden for small companies. A concomitant requirement on the BE–13 that a report be filed for all acquisitions of 200 or more acres of U.S. land will not be changed. The exemption level for the related form BE–14 also is raised to correspond to the new $3 million threshold for the BE–13.

To maintain consistency with the benchmark survey, BEA also proposes to base the industry coding system used on the BE–13 on the new North American Industry Classification System (NAICS) in place of the current system, which is based on the U.S. Standard Industrial Classification System. However, this modification does not require a rule change and therefore is not reflected in this proposed rule. The revised BE–13 and BE–14 report forms would be required to be filed for reports covering 1998 transactions.

The change in the basis for industry coding should not affect the average reporting burden for the BE–13 new investment survey. However, BEA estimates that 300 potential respondents to the survey will not be required to file in the survey because of raising the reporting threshold to $3 million from $1 million. This represents a 20 percent decrease in the estimated number of reporters that would otherwise be required to report in the survey.

A copy of the proposed survey forms may be obtained from: Chief, Direct Investment in the United States Branch, International Investment Division, BE–49, Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230; phone (202) 606–5577.

**Executive Order 12612**

These proposed rules do not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under E.O. 12612.

**Executive Order 12866**

These proposed rules have been determined to be not significant for purposes of E.O. 12866.

**Paperwork Reduction Act**

These proposed rules contain a collection of information requirement subject to the Paperwork Reduction Act. The collection of information requirement contained in the proposed rule has been submitted to the Office of Management and Budget for review under section 3507 of the Paperwork Reduction Act.

Notwithstanding any other provisions of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection displays a currently valid Office of Management and Budget Control Number.

Public reporting burden for the BE–605 collection of information is estimated to vary from ½ hour to 4 hours per response with an average 1¼ hours per response. The estimated average burden of 1¼ hours per form includes time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Public reporting burden for the BE–13 collection of information is estimated to vary from 1 to 4 hours per response, with an average 1½ hours per response. The estimated average burden of 1½ hours includes time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the agency, including whether the information will have practical utility; (b) the accuracy of the burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. Comments should be addressed to: Director, Bureau of Economic Analysis (BE–1), U.S. Department of Commerce, Washington, DC 20230; and to the Office of Management and Budget, O.I.R.A., Paperwork Reduction Project 0608–0009 (BE–605/605 Bank) or Paperwork Reduction Project 0608–0035 (BE–13/14), Washington, DC 20503.

**Regulatory Flexibility Act**

The Assistant General Counsel for Legislation and Regulation, Department of Commerce, has certified to the Chief Counsel for Advocacy, Small Business Administration, under provisions of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that this proposed rulemaking, if adopted, will not have a significant economic impact on a substantial number of small entities. Most small businesses are not foreign owned, and many that are will not be required to report because of these proposed changes. For the BE–605 quarterly survey, the proposed rule changes increase the exemption level at which reporting will be required, thereby eliminating the reporting requirement for a number of small companies. For the BE–13 new investment survey, the reporting threshold is being raised from $1 million to $3 million, thus eliminating an additional number of small companies that would have been required to file. These provisions are intended to reduce the reporting burden on smaller companies.

**List of Subjects in 15 CFR Part 806**

Balance of payments, Economic statistics, Foreign investment in the United States, Reporting and recordkeeping requirements.

**J. Steven Landefeld,**

*Director, Bureau of Economic Analysis.*

For the reasons set forth in the preamble, BEA proposes to amend 15 CFR part 806 as follows:

## PART 806—DIRECT INVESTMENT SURVEYS

1. The authority citation for 15 CFR Part 806 continues to read as follows:

**Authority:** 5 U.S.C. 301, 22 U.S.C. 3101–3108, and E.O. 11961 (3 CFR, 1977 Comp., p. 86), as amended by E.O. 12013 (3 CFR, 1977 Comp., p. 147), E.O. 12318 (3 CFR, 1981 Comp., p. 173), and E.O. 12518 (3 CFR, 1985 Comp., p. 348).

**§ 806.15 [Amended]**

2. Section 806.15(h)(1) is amended by deleting ''$20,000,000'' and inserting in its place ''$30,000,000.''

3. Section 806.15(h)(2) is amended by deleting ''$20,000,000'' and inserting in its place ''$30,000,000.''

4. Section 806.15(j)(3)(ii)(b) is amended by deleting ''$1,000,000'' and inserting in its place ''$3,000,000.''

5. Section 806.15(j)(3)(ii)(c) is amended by deleting ''$1,000,000'' and inserting in its place ''$3,000,000.''

6. Section 806.15(j)(4)(ii)(b) is amended by deleting ''$1,000,000'' and inserting in its place ''$3,000,000.''

[FR Doc. 97–32251 Filed 12–9–97; 8:45 am]

BILLING CODE 3510–06–M

## DEPARTMENT OF THE INTERIOR

## Office of Surface Mining Reclamation and Enforcement

## 30 CFR Part 917

**[KY–217–FOR]**

## Kentucky Regulatory Program

**AGENCY:** Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

**ACTION:** Proposed rule; public comment period and opportunity for public hearing.

**SUMMARY:** OSM is announcing receipt of a proposed amendment to the Kentucky regulatory program (hereinafter the ''Kentucky program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Kentucky submitted a letter requesting the removal of an amendment at 30 CFR 917.17(a) which required that it maintain a staffing level of 156 field inspectors and, in the same letter, provided justification for its request. The amendment is intended to revise the Kentucky program to be consistent with the corresponding Federal regulations.

**DATES:** Written comments must be received by 4:00 p.m., [E.S.T.], January 9, 1998. If requested, a public hearing on the proposed amendment will be held on January 5, 1998. Requests to speak at the hearing must be received by 4:00 p.m., [E.S.T.], on December 29, 1997.

**ADDRESSES:** Written comments and requests to speak at the hearing should be mailed or hand delivered to William J. Kovacic, Director, at the address listed below.

Copies of the Kentucky program, the proposed amendment, a listing of any scheduled public hearings, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Lexington Field Office.

William J. Kovacic, Director, Lexington Field Office, Office of Surface Mining Reclamation Enforcement, 2675 Regency Road, Lexington, Kentucky 40503. Telephone: (606) 233–2896.

Department of Surface Mining Reclamation and Enforcement, 2 Hudson Hollow Complex, Frankfort, Kentucky 40601, Telephone: (502) 564–6940.

**FOR FURTHER INFORMATION CONTACT:** William J. Kovacic, Director, Lexington Field Office, Telephone: (606) 233–2896.

**SUPPLEMENTARY INFORMATION:**

## I. Background on the Kentucky Program

On May 18, 1982, the Secretary of the Interior conditionally approved the Kentucky program. Background information on the Kentucky program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the May 18, 1982, **Federal Register** (47 FR 21404). Subsequent actions concerning the conditions of approval and program amendments can be found at 30 CFR 917.11, 917.13, 917.15, 917.16, and 917.17.

## II. Description of the Proposed Amendment

By letter dated November 3, 1997 (Administrative Record No. KY–1418), Kentucky submitted a proposed amendment to its program requesting the removal of an amendment at 30 CFR 917.17(a) requiring that Kentucky maintain a staffing level of 156 field inspectors. In the same letter, Kentucky provided the following justification for its request:

1. Field inspector staffing levels are no longer based on 1984 inspection numbers and budgetary needs.

2. A study performed during the National Wildlife Federation Settlement Agreement determined that a cap of 24 inspectable units per field inspector should be established.

3. OSM has accepted the limits set by the study in determining inspection staff levels as indicated by the approval of Title V administrative and enforcement grants.

4. OSM's annual reports indicate that Kentucky's Title V regulatory program consistently meets high inspection frequency levels.

Kentucky also maintains that using a fixed number of field inspectors fails to provide the latitude necessary to adapt its inspection force to changing conditions in the coal industry. Further, the number of inspectors Kentucky maintains is based on the current and ever-changing number of inspectable units.

## III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Kentucky program.

*Written Comments*

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under ''**DATES**'' or at locations other than the Lexington Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

*Public Hearing*

Persons wishing to speak at the public hearing should contact the person listed under ''**FOR FURTHER INFORMATION CONTACT**'' by 4:00 p.m., [E.S.T.] on December 29, 1997. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to speak at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to speak have been heard. Persons in the audience who have not been scheduled to speak, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to speak and persons present in the audience who wish to speak have been heard.

Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under ''**FOR FURTHER INFORMATION CONTACT**.''

*Public Meeting*

If only one person requests an opportunity to speak at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting by contacting the person listed under ''**FOR FURTHER INFORMATION CONTACT**.'' All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under ''**ADDRESSES**.'' A written summary of each meeting will be made a part of the Administrative Record.

## IV. Procedural Determinations

*Executive Order 12866*

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

*Executive Order 12988*

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that,to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards

are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

*National Environmental Policy Act*

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)),

*Paperwork Reduction Act*

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

*Regulatory Flexibility Act*

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the department relied upon the data and assumptions for the counterpart Federal regulations.

*Unfunded Mandates*

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

**List of Subjects in 30 CFR Part 917**

Intergovernmental relations, Surface mining, Underground mining.

Dated: December 2, 1997.

**Michael K. Robinson,**

*Acting Regional Director, Appalachian Regional Coordinating Center.*

[FR Doc. 97–32222 Filed 12–9–97; 8:45 am]

BILLING CODE 4310–05–M

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[WI74–01–7303; FRL–5929–8]**

### Approval and Promulgation of Implementation Plans; Wisconsin

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The purpose of this action is to propose approval of the State of Wisconsin's Prevention of Significant Deterioration (PSD) rules, Natural Resources (NR) 405.01 through NR 405.17, as a revision to the Wisconsin State Implementation Plan (SIP). The State developed rules as Wisconsin's plan to prevent significant deterioration of air quality in areas designated as unclassifiable or attainment of the National Ambient Air Quality Standards (NAAQS) and to satisfy the requirements of part C of the Clean Air Act (Act). EPA is approving these rules because they meet EPA's regulation governing State PSD programs. In addition to the PSD rules, Wisconsin has submitted rules as a revision to the SIP to establish breathable particulates (PM–10) as a basis for the determination of particle concentrations for permitting purposes under the PSD program and, therefore, tie the new source permit evaluations directly to human health standards. Finally, Wisconsin submitted as a revision to the SIP changes of a ''clean-up'' nature, intended to correct errors in content or style, to improve consistency, or clarify existing policy and procedures.

**DATES:** Comments on this revision and on the proposed EPA action must be received by January 9, 1998. Comments received in response to EPA's January 4, 1994 proposed disapproval of NR 405 will, if still applicable, be responded to at the time of EPA's final rulemaking on this rule and need not be resubmitted.

**ADDRESSES:** Comments should be submitted to Carlton Nash, EPA Region 5, 77 West Jackson Boulevard, AR–18J, Chicago, Illinois, 60604. Copies of the State's submittal and other supporting information used in developing the proposed approval are available for inspection during normal business hours at the above Region 5 address. Please contact Constantine Blathras at (312) 886–0671 to arrange a time if inspection of these materials is desired.

Copies of the submittal are also located at the Bureau of Air Management, Wisconsin Department of Natural Resources, 101 South Webster Street, P.O. Box 7921, Madison, Wisconsin 53707.

**FOR FURTHER INFORMATION CONTACT:** Constantine Blathras, AR–18J, 77 West Jackson Boulevard, Chicago, Illinois, 60604, (312) 886–0671.

**SUPPLEMENTARY INFORMATION:**

#### I. Background and Purpose

The 1977 Amendments to the Act added part C to Title I, which required implementation of a PSD program. On June 19, 1978, EPA promulgated a PSD program to meet the requirements of part C, 50 CFR 52.21, which contains the procedures and requirements which EPA follows when it carries out the mandates of part C itself. These Section 52.21 requirements were then promulgated into those State SIPs where a State did not have an approvable plan in place. Section 52.21 provides that its requirements and authorities, or part thereof, can be delegated to the State and local air programs if EPA determines they have the ability and authority to carry out its mandates.

On June 19, 1978, (43 FR 26410), EPA promulgated the Federal PSD program, 40 CFR 52.21 (b–v), into the Wisconsin SIP at 40 CFR 52.2581 because Wisconsin had not submitted an approvable PSD program. On August 19, 1980, EPA gave Wisconsin partial delegation to run the Federal PSD program and on November 13, 1987, gave Wisconsin full delegation of the program, except for sources within the exterior boundaries of a Tribal reservation.

Section 301(d) of the Act authorizes the Administrator to determine which Act authorities are appropriate for Tribes to administer within the exterior boundaries of its reservations and to promulgate rules as to how Tribes can assume these authorities. These rules were proposed, but have yet to be promulgated. EPA recognizes that a Tribe will upon promulgation generally have inherent sovereign authority over air resources within the exterior boundaries of its reservation, if requested and approved. Until such time, EPA will continue to implement these programs within the exterior

boundaries of Indian reservations. Therefore, EPA did not delegate and is proposing to not approve Wisconsin's PSD or PM–10 rules for application with the exterior boundaries of Tribal reservations.

On March 16, 1987, the Wisconsin Department of Natural Resources (WDNR) requested the Regional Administrator to include Chapter NR 405 of the Wisconsin Administrative Code as part of the SIP to meet the requirements of part C of the Act and as a replacement for EPA's delegated program (40 CFR 52.2581). Rule NR 405 deals exclusively with PSD permitting requirements. On January 4, 1994 (59 FR 278), EPA proposed to disapprove Wisconsin's PSD SIP revision, NR 405.01 through NR 405.17. The deficiencies in the proposal were addressed by the WDNR in comments on March 8, 1994, and, to avoid having the SIP revision formally disapproved, the WDNR withdrew the original submittal.

On November 6, 1996, the WDNR submitted a request for approval of its PSD program, as revised. More specifically, this submittal addresses the deficiencies listed in the January 4, 1994, **Federal Register** document proposing to disapprove the State of Wisconsin's PSD rules as a revision to the Wisconsin SIP. On December 18, 1996, EPA sent a letter to the WDNR deeming the revised submittal complete and initiating the processing of the request. The following analysis addresses the review of the submittal with respect to the requirements found in EPA's regulation governing State PSD programs (40 CFR 51.166).

## II. Approvability Analysis

Wisconsin NR 405 deals exclusively with PSD permitting requirements. EPA evaluated NR 405 by comparing each section of the rule to the appropriate paragraph of 40 CFR 51.166 (formerly 40 CFR 51.24). Listed below are the deficiencies formerly found and raised in the January 4, 1994, **Federal Register** document and how the WDNR addressed those concerns. All other portions of NR 405 were found previously to be approvable and remain so.

### *A. NSPS and NESHAP*

1994 Deficiency: The Federal PSD definitions at 40 CFR 51.166 pertaining to (1) Best Available Control Technology'' (BACT), (2) ''Allowable emissions,'' (3) ''Federally enforceable,'' and (4) the control technology review requirements make reference to applicable standards and standards of performance under 40 CFR part 60 (NSPS) and 40 CFR part 61 (NESHAPS), respectively. In the comparable provisions of the State rule, the State referred to other NR 400 series chapters, i.e., NR 400, 445 to 499, and 400 to 499 of the State code. Although the State may have intended that these chapters approximate the requirements of 40 CFR part 60 and 40 CFR part 61, Wisconsin's NSPS and NESHAP regulations are not federally enforceable and may, in certain circumstances, differ significantly from the parts 60 and 61 requirements in the Federal PSD requirements. Furthermore, the references to parts 60 and 61 requirements in the Federal PSD requirements for BACT and control technology review (sections 51.166 (b)(12) and 51.166 (j)(1), respectively) set minimum emissions requirements. Because under the State rules, the State could set less stringent NSPS and NESHAP emission limits than the Federal standards, or not set any limits at all, the State PSD provisions which were dependent upon the requirements of Chapter NR 400 and Chapters NR 445 to 499 were not approvable. Section 116 of the Act prohibits States from adopting standards and limitations that are less stringent than Federal standards and limitations.

*WDNR Response:* Wisconsin changed the definitions of ''allowable emissions'' (NR 405.02(2), Wis. Adm. Code), ''BACT'' (NR 405.02(7), and ''federally enforceable'' (NR 400.02(39M). Wisconsin also changed section NR 405.08, to reflect the requirement that limits set in a PSD permit can not be less stringent than an applicable requirement in 40 CFR parts 60, 61, or 63, in addition to the requirements contained in the States rules.

*EPA Analysis:* WDNR has adequately addressed the deficiency.

### *B. Stack Height*

*1994 Deficiency:* The provisions in 40 CFR part 51, Subpart I—''Revision of New Sources and Modifications'' set forth both general and specific requirements for permitting PSD sources, including definitions. In order for the State to implement the stack height provision in accordance with 40 CFR 51.164 and 51.166(h), it must have definitions of such terms as ''stack,'' ''dispersion technique,'' and ''good engineering practice.''

*WDNR Response:* On November 6, 1985, the State submitted a letter stating that permits issued for new or modified sources will conform with the requirements with the Stack Height Regulation, as set forth in the **Federal Register** on July 8, 1985, until such time that the State promulgates it own rule.

*EPA Analysis:* As submitted, this provision meets the stack height requirements of the PSD program, and EPA approved Wisconsin's commitment on August 4, 1989 (54 FR 32074), as a portion of Wisconsin's stack height plan. Wisconsin understands that the current commitment stated in the **Federal Register** document is still approvable. No additional corrections are needed.

### *C. Federally issued PSD permits*

*1994 Deficiency:* The State's definition of ''major modification,'' NR 405.02(21)(b)(c), exempted increases in hours of operation or production rates from review unless such increases were prohibited by permits issued after January 6, 1975, under NR 405. This rule was deficient for not requiring review of sources with such increases if the increases were prohibited by previously issued Federal permits or during the period when EPA issued the permits prior to the delegation of the program's authority. The State rule only exempted from the exclusion those permits with conditions ''pursuant to this chapter,'' i.e., the Wisconsin rule. There was no requirement for review of modifications to federally issued permits with exemptions pursuant to 40 CFR 52.21.

*WDNR Response:* Wisconsin changed the definition of ''major modification'' (NR 405.02(21)(b)6., to include any language excluding from exemption actions prohibited by federally issued permits pursuant to 40 CFR 52.21.

*EPA Analysis:* WDNR has adequately addressed the deficiency.

### *D. Source specific allowable emissions*

*1994 Deficiency:* NR 405.02(1) contains the term ''source specific allowable emissions''. The meaning of the term was unclear. The analogous Federal rule in 40 CFR part 52 depends upon the preamble language published in the **Federal Register** on August 7, 1980 (45 FR 154) to quantify the term to exclude cases where data on actual emissions are available. EPA recommended that the language in NR 405.02(1) be clarified so that the State term would have the same meaning as the Federal term.

*WDNR Response:* Wisconsin disagreed with EPA's assessment and consequently did not take action to clarify the phrase ''source specific allowable emissions'' contained in NR 405.02(1)(b).

Wisconsin noted that EPA implements the Federal PSD program under 40 CFR part 52 whereas part 51 contains SIP requirements. EPA has promulgated the requirements for SIP

approval of the PSD program in 40 CFR 51.166.

Section 40 CFR 51.166(b) states:

''All State plans shall use the following definitions for the purposes of this section. Deviations from the following wording will be approved only if the State specifically demonstrates that the submitted definition is more stringent, or at least as stringent, in all respects as the corresponding definitions below.''

Section NR 405.02(1)(b), which contains the phrase ''source specific allowable emissions'' uses this term in exactly the same manner as EPA uses it in 40 CFR 51.166(b)(21)(iii), the definition which 40 CFR 51.166(b) requires the State plan to use. Nowhere in 40 CFR 51.166 is there a requirement that ''source specific allowable emissions'' be defined even though it appears in the part 52 Federal regulation. Wisconsin asserted that if EPA wanted States to define this term in State rules, EPA could have and should have put such a requirement in 40 CFR 51.166(b).

WDNR also demonstrated that the requirements in the State rule meet the SIP requirements in 40 CFR part 51, and that the preamble in the **Federal Register** regarding 40 CFR part 52 does not apply to 40 CFR part 52 approvals.

*EPA Analysis:* The State definition meets the Federal definition found in 40 CFR 51.166(b)(21)(iii) and is approvable.

*E. PSD Increments*

*1994 Deficiency:* The State PSD increments for sulfur dioxide and particulate matter are found in Chapter NR 404.05. The increments were not included in Wisconsin's March 16, 1987 PSD submittal.

*WDNR Response:* Wisconsin included the increments in its November 24, 1992, submittal.

*EPA Analysis:* WDNR has adequately addressed the deficiency.

*F. Modeling Guidelines*

*1994 Deficiency:* The modeling guidelines referenced in NR 405.10 were outdated, although they were current at the time of the 1987 submittal. To make NR 405.10 approvable as a SIP revision, it would either have to reference the most recent guidelines (see 40 CFR 165(1)) or state that the applicant must use EPA's most current applicable guideline models.

*WDNR Response:* Wisconsin changed NR 405.10 to require the use of ''air quality models, data bases, and other requirements specified in the Guideline on Air Quality Models (Revised) in Appendix W of 40 CFR part 51, incorporated by reference in NR 484.04. The rulemaking on this change to NR 405.10 was completed at the same time as the PM–10 increment rules. The PM–10 increment rules (AM–27–94) are being submitted for approval as well.

*EPA Analysis:* WDNR has adequately addressed the deficiency.

*G. Nitrogen dioxide ($NO_2$) Increments*

*Original Deficiency:* On October 17, 1988 (53 FR 40656), EPA promulgated PSD air quality increments for $NO_2$. The States were required to submit to EPA by July 17, 1990 plan revisions to protect the $NO_2$ increments.

*WDNR Response:* Wisconsin submitted such increments to EPA on November 24, 1992.

*EPA Analysis:* This submittal meets the $NO_2$ increment requirements and is approvable.

*H. Particulate Matter (PM) significant level*

*1994 Deficiency:* On July 1, 1987 (52 FR 24713), EPA promulgated the significant level for PM at 15 tons per year. Wisconsin submitted two PM SIP revisions on March 13, 1989 and May 10, 1990 to meet the Federal PM requirements. These submittals were proposed for approval on March 13, 1989, (NR 400.02, 404.02, 405.02, 406.04, 484.03) which contains the PM significant level, and May 10, 1990 (NR 404.04, 484.03). EPA then proposed to disapprove the package on December 23, 1992.

*WDNR Response:* After receiving comments from the State, EPA moved to approve the package. The final rulemaking approving the PM–10 SIP rules was published on June 28, 1993 (58 FR 34528).

*EPA Analysis:* All necessary actions regarding this deficiency are completed.

Because of the revisions made to NR 405 as a result of the deficiencies raised in previous analysis, and because the remainder of NR 405 remains approvable, NR 405 is being proposed for approval with respect to meeting the Act part C requirements.

Chapter NR 405 presumes to apply PSD regulation within the total area of the State of Wisconsin. As stated above, EPA is proposing to approve this rule for all portions of the State of Wisconsin except for those sources within the exterior boundaries of Indian reservations. EPA will issue PSD permits, as needed, to all such sources.

## III. Final Action

The EPA is proposing to approve the November 6, 1996, request by the State of Wisconsin for approval as a revision to its SIP of its rules meeting the requirements of part C of the Act, the adoption of the Federal PM–10 increments, and clarification changes intended as a ''clean-up'' of existing air pollution control rules.

Copies of the State's submittal and other information relied upon for this proposal are contained in a rulemaking file maintained at the EPA Regional office. The file is an organized and complete record of all information submitted to, or otherwise considered by, EPA in the development of this proposed approval. The file is available for public inspection at the location listed under the **ADDRESSES** section of this document.

## IV. Administrative Review

Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future request for revision to any SIP. EPA shall consider each request for revision to the SIP in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. (5 U.S.C. 603 and 604) Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

This action is exempt from OMB review.

## V. Unfunded Mandates

Under sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more the private sector, or to State, local, or tribal governments in the aggregate.

EPA has determined that the approval action promulgated does not constitute a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector.

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of this rule in

the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, New source review, Nitrogen dioxide, Particulate matter, Reporting, and recordkeeping requirements, Sulfur dioxide, Volatile organic compounds.

**Authority:** 42 U.S.C. 7401, *et seq.*

Dated: November 14, 1997.

**David A. Ullrich,**

*Acting Regional Administrator, Region 5.*

[FR Doc. 97–31280 Filed 12–9–97; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 63

**[FRL–5932–2]**

### Approval of Section 112(l) Authority for Hazardous Air Pollutants; Perchloroethylene Air Emission Standards for Dry Cleaning Facilities; State of California; San Luis Obispo County Air Pollution Control District

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** Pursuant to section 112(l) of the Clean Air Act (CAA) and through the California Air Resources Board, San Luis Obispo County Air Pollution Control District (SLOCAPCD) requested approval to implement and enforce its ''Rule 432: Perchloroethylene Dry Cleaning Operations'' (Rule 432) in place of the ''National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities'' (dry cleaning NESHAP) for area sources under SLOCAPCD's jurisdiction. In the Rules section of this **Federal Register**, EPA is granting SLOCAPCD the authority to implement and enforce Rule 432 in place of the dry cleaning NESHAP for area sources under SLOCAPCD's jurisdiction as a direct final rule without prior proposal because the Agency views this as a noncontroversial action and anticipates no adverse comments. A detailed rationale for this approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this action should do so at this time.

**DATES:** Comments on this proposed rule must be received in writing by January 9, 1998.

**ADDRESSES:** Written comments on this action should be addressed to: Andrew Steckel, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the submitted request are available for public inspection at EPA's Region IX office during normal business hours.

**FOR FURTHER INFORMATION CONTACT:** Mae Wang, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1200.

**SUPPLEMENTARY INFORMATION:** This document concerns SLOCAPCD Rule 432, Perchlorothylene Dry Cleaning Operations, adopted on November 13, 1996. For further information, please see the information provided in the direct final action which is located in the Rules section of this **Federal Register**.

**Authority:** This action is issued under the authority of Section 112 of the Clean Air Act, as amended, 42 U.S.C. Section 7412.

Dated: November 23, 1997.

**Felicia Marcus,**

*Regional Administrator.*

[FR Doc. 97–32330 Filed 12–9–97; 8:45 am]

BILLING CODE 6560–50–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of Inspector General

### 42 CFR Part 1001

### Solicitation of New Safe Harbors and Special Fraud Alerts

**AGENCY:** Office of Inspector General (OIG), HHS.

**ACTION:** Notice of intent to develop regulations.

**SUMMARY:** In accordance with section 205 of the Health Insurance Portability and Accountability Act (HIPAA) of 1996, this notice solicits proposals and recommendations for developing new and modifying existing safe harbor provisions under the Federal and State health care programs' anti-kickback statute, as well as developing new OIG Special Fraud Alerts. The purpose of developing these documents is to clarify OIG enforcement policy with regard to program fraud and abuse.

**DATES:** To assure consideration, public comments must be delivered to the address provided below by no later than 5 p.m. on February 9, 1998.

**ADDRESSES:** Please mail or deliver your written comments to the following address: Office of Inspector General, Department of Health and Human Services, Attention: OIG–21–N, Room 5246, Cohen Building, 330 Independence Avenue, S.W., Washington, D.C. 20201. We do not accept comments by facsimile (FAX) transmission. In commenting, please refer to file code OIG–21–N. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 5541 of the Office of Inspector General at 330 Independence Avenue, S.W., Washington, D.C., on Monday through Friday of each week from 8:00 a.m. to 4:30 p.m.

**FOR FURTHER INFORMATION CONTACT:** Joel Schaer, (202) 619–0089, OIG Regulations Officer.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

*A. The OIG Safe Harbor Provisions*

Section 1128B(b) of the Social Security Act (the Act) (42 U.S.C. 1320a–7b(b)) provides criminal penalties for individuals or entities that knowingly and willfully offer, pay, solicit or receive remuneration in order to induce business reimbursed under the Federal or State health care programs. The offense is classified as a felony, and is punishable by fines of up to $25,000 and imprisonment for up to 5 years.

The types of remuneration covered specifically include kickbacks, bribes, and rebates, whether made directly or indirectly, overtly or covertly, or in cash or in kind. In addition, prohibited conduct includes not only remuneration intended to induce referrals of patients, but remuneration intended to induce the purchasing, leasing, ordering, or arranging for any good, facility, service, or item paid for by Federal or State health care programs.

Since the statute on its face is so broad, concern has been expressed for many years that some relatively innocuous commercial arrangements are technically covered by the statute and are, therefore, subject to criminal prosecution. As a response to the above concern, the Medicare and Medicaid Patient and Program Protection Act of 1987, section 14 of Public Law 100–93,

specifically required the development and promulgation of regulations, the so-called ''safe harbor'' provisions, designed to specify various payment and business practices which, although potentially capable of inducing referrals of business under the Federal and State health care programs, would not be treated as criminal offenses under the anti-kickback statute (section 1128B(b) of the Act; 42 U.S.C. 1320a–7b(b)) and would not serve as a basis for a program exclusion under section 1128(b)(7) of the Act; 42 U.S.C. 1320a–7(b)(7). The OIG safe harbor provisions have been developed ''to limit the reach of the statute somewhat by permitting certain non-abusive arrangements, while encouraging beneficial and innocuous arrangements'' (56 FR 35952, July 29, 1991). Health care providers and others may voluntarily seek to comply with these provisions so that they have the assurance that their business practices are not subject to any enforcement action under the anti-kickback statute or program exclusion authority.

To date, the OIG has developed and codified in 42 CFR 1001.952 a total of 13 final safe harbors that describe practices that are sheltered from liability, and is continuing to finalize 8 additional safe harbor provisions (see the OIG notice of proposed rulemaking at 58 FR 49008, September 21, 1993).

*B. OIG Special Fraud Alerts*

In addition, the OIG has also periodically issued Special Fraud Alerts to give continuing guidance to health care providers with respect to practices the OIG regards as unlawful. These Special Fraud Alerts serve to notify the health care industry that the OIG has become aware of certain abusive practices that the OIG plans to pursue and prosecute, or to bring civil and administrative action, as appropriate. The Special Fraud Alerts also serve as a tool to encourage industry compliance by giving providers an opportunity to examine their own practices. The OIG Special Fraud Alerts are intended for extensive distribution directly to the health care provider community, as well as those charged with administering the Medicare and Medicaid programs.

In developing these Special Fraud Alerts, the OIG has relied on a number of sources and has consulted directly with experts in the subject field, including those within the OIG, other agencies of the Department, other Federal and State agencies, and those in the health care industry. To date, eight individual Special Fraud Alerts have been issued by the OIG and subsequently reprinted in the **Federal Register** on December 19, 1994 (59 FR 65372), August 10, 1995 (60 FR 40847) and June 17, 1996 (61 FR 30623).

*C. Section 205 of Public Law 104–191*

In accordance with the Health Insurance Portability and Accountability Act of 1996 (Public Law 104–191), the Department is now required to provide additional formal guidance regarding the application of the anti-kickback statute and the safe harbor provisions, as well as other OIG health care fraud and abuse sanctions. In addition to accepting and responding to requests for advisory opinions to outside parties regarding the interpretation and applicability of certain statutes relating to the Federal and State health care programs, section 205 of Public Law 104–191 requires the Department to develop and publish an annual notice in the **Federal Register** formally soliciting proposals for (1) modifying existing safe harbors, and (2) developing new safe harbors and OIG Special Fraud Alerts. After considering such proposals and recommendations, the Department, in consultation with the Department of Justice, will consider the issuance of new or modified safe harbor regulations, as appropriate. In addition, the OIG will consider the issuance of additional Special Fraud Alerts.

On December 31, 1996, the Department published the first of these annual **Federal Register** notice solicitations (61 FR 69060) addressing proposals and recommendations for developing new and modifying existing safe harbor provisions under the Federal and State health care programs' anti-kickback statute, as well as developing new OIG Special Fraud Alerts. As a result, the OIG received a total of 32 timely-filed public comments from a cross-section of organizations, associations and other outside entities. In response to that solicitation, respondents raised a number of issues and comments on a variety of areas, including general comments concerning application of the existing safe harbor provisions, and specific concerns over the existing safe harbors presently codified in 42 CFR 1001.952 and those proposed in our September 1993 notice of proposed rulemaking. Respondents also recommended new safe harbors for, among other practices and arrangements: (1) physician ownership of hospitals; (2) provider sponsorship or support of continuing education programs for health care practitioners and facilities; (3) provision of cataract surgery-related prosthetic devices; (4) loans between parties in a position to refer or arrange for the referral of Medicare covered items; (5) *de minimis* gifts to beneficiaries for recommending new patients; (6) intercorporate transfers among entities delivering health care through integrated delivery systems; and (7) payments for purposes of physician retention.

Special Fraud Alerts were also suggested to address such areas as: (1) financial arrangements between hospitals and hospital-based physicians; (2) billing management consultants; (3) hospital discharges and transfers; (4) food vendor ''value added'' services; and (5) demands for discounts by Medigap insurers.

The array of proposals and recommendations received for new safe harbors and Special Fraud Alerts are summarized below, and are still under review within the OIG. When the OIG has fully assessed the merits of these recommendations, we will consider the promulgation of formal proposed regulations to create new safe harbors for those proposals deemed appropriate.

## II. Summary of Previously Submitted Recommendations for New Safe Harbors and OIG Special Fraud Alerts

Set forth below is a summary of the major topics previously submitted for consideration in the OIG development of new safe harbors and Fraud Alerts. This listing serves to outline the major concepts and specific proposals received by this office as a result of the December 1996 solicitation notice. The OIG is currently taking these recommendations under advisement, and is *not seeking* additional public comment on *these* proposals at this time.

*A. Proposed New Safe Harbors*

Interface With the Stark Law

Commenters indicated that physician groups are closely regulated by both the anti-kickback statute and the physician self-referral laws, i.e., the Stark provisions. Since many existing safe harbors are similar but not identical to the statutory exceptions under the Stark law, commenters indicated that physician groups are forced to analyze much of what they do under two separate bodies of law, and are left with regulatory uncertainty. As a result, they recommended that the OIG conform safe harbors to the statutory and regulatory exceptions applicable under the Stark provisions, thus protecting any payment arrangement that meets an exception under the Stark provisions. We intend specifically to address this issue in the final regulations that are being developed in response to the September 1993 proposed rule.

Physician Ownership of Hospitals

Since physician investment in hospitals is expressly recognized under the Stark provisions, a recommendation was made for a companion safe harbor for physicians and group practices that hold ownership interests in hospitals to which they refer.

ASCs, CORFs and Similar Entities

Commenters recommended expanded safe harbors to cover ambulatory surgical centers (ASCs) owned by a group practice (even if not all members of the group are surgeons), and for ASCs that are owned in part by physicians and in part by hospitals or other non-physician investors, as long as the physician's return on investment is based on the performance of the ASC as a whole. A commenter also requested protection for physician ownership in other facilities where they practice, such as comprehensive outpatient rehabilitation facilities. We expect to address these issues in the final regulations being developed in response to our earlier safe harbor proposed rule.

Services Provided by Federally-Funded Community Health Centers

A safe harbor was suggested to allow Federally-funded community health centers to take advantage of opportunities to improve their services to disadvantaged patients, for example, by arranging for discounted services where the arrangement will produce a substantial benefit to a medically underserved population.

Continuing Education

One commenter recommended a safe harbor delineating the circumstances under which manufacturers, commercial laboratories and other providers can sponsor or provide continuing education programs to health care facilities and practitioners. This commenter believed that many educational opportunities may be foregone by practitioners who, at the request of the provider, may have to notify other local practitioners about the presentation to avoid the appearance of impropriety. The commenter was concerned that the OIG may consider a presentation to a single hospital, for example, as an inducement for Medicare referrals.

Cataract Surgery-Related Prosthetic Devices

A recommendation was made for a safe harbor addressing the referral of patients for eyeglasses, contact lenses and intraocular lenses. A commenter stated that eyeglasses and contact lenses sold by optical stores, regardless of who owns the establishment, are consumer items that are subject to specific controls by the Federal Trade Commission, as well as by State regulation and free market competition. With respect to a safe harbor for the provision of intraocular lenses during cataract surgery, the commenter indicated that patients during an operation are not in a position to shop elsewhere for these items, and the selection of these lenses is based on operative techniques and often cannot be done prior to surgery.

New Managed Care Safe Harbors

A new safe harbor was suggested to apply broadly to all Medicare and Medicaid contracting managed care plans that are in compliance with the applicable requirements under Medicare, and plans that are participating in the Health Care Financing Administration (HCFA) managed care demonstrations. A recommendation was also made to establish comparable safe harbor protection for managed care plans that are licensed or regulated by HCFA or State regulatory bodies, involving non-contracting organizations and their activities involved in providing and arranging care for Medicare beneficiaries. Further, a recommendation for new safe harbors was also received that would protect other managed care financial relationships, such as (i) payment arrangements between managed care organizations and manufacturers that relate to usage of the manufacturer's products by the managed care organization's enrollees and (ii) protection for preferred provider organizations that charge administrative fees to providers.

Intercorporate Transfers

Commenters recommended that a new safe harbor be created for integrated delivery systems that would address payments between related entities, including, among others, parent companies and wholly-owned subsidiaries. This safe harbor would serve to clarify permissible transfers of ''remuneration'' between and among physicians, hospitals, health plans and others who are delivering health care through integrated delivery systems.

Offering Flat Rates for Outpatient Surgery by Hospitals

With regard to outpatient surgeries, a commenter stated that providers should be able to charge Medicare patients in the same fashion as other patients, without fear of sanctions. As a result, they recommended a new safe harbor for flat fees for outpatient surgeries. The commenter suggested that this would enhance access to health services to the extent that the beneficiary would have a greater comfort level knowing the coinsurance charge at the time a procedure is scheduled rather than dealing with uncertainty of not knowing the precise amount of the coinsurance obligation until after the procedure has been billed.

Physician Retention

A new safe harbor was recommended for all physician retention efforts by hospitals, regardless of a hospital's location. The safe harbor would protect payments or benefits offered by hospitals and other entities to retain physicians and other practitioners in the service area.

Investments by Ambulatory Surgical Center (ASC) Administrators and Family Members

A commenter suggested a safe harbor to protect investment interests by certain non-practitioners who are actively involved with the delivery of health care services at an ASC in an administrative or managerial capacity. Since many ASCs are owned, in part, by facility administrators who have a vested interest in the success of the ASC, it was believed that these individuals should be allowed to invest in ASCs and participate in any profits generated by the facility at which they work with the protection of a safe harbor, much like surgeons would be allowed to invest in the ASC even if passive investors. The commenter also believed that a safe harbor should allow investment interests in ASCs to be held by family members of those individuals whose investment interests are protected by the safe harbor so long as those family members are not able to make or influence referrals to the facility. We expect to address this issue in the OIG's final regulations being developed in response to our earlier safe harbors proposal.

ASCs Located in Underserved Rural Areas

To encourage efficient and less-costly medical care delivery, it was recommended that all investments in an ASC in an area where there was previously no ASC or hospital, regardless of their source, should receive protection as long as the investments meet specific criteria set forth in the proposed safe harbor for investments in entities in rural areas. (Proposed revisions to § 1001.952(a)(4) were set forth in the OIG proposed

rulemaking of September 21, 1993 (58 FR 49008).)

Loans

A commenter indicated that loans between a provider and practitioner are often the only available source of necessary capital in a community, and recommended protection for loans between parties who may be in a position to refer, recommend or arrange for the referral or recommendation of Medicare or Medicaid covered items or services.

Investments

Although there is a safe harbor under the anti-kickback statute for investment interests, a commenter believed that it expressly protects only payments in the form of ''return paid to investors'' on investments that comply with the safe harbor's requirement, but not expressly the investments themselves. They indicated that health care providers and practitioners often enter into legitimate business ventures in which the investors are potential recipients of referrals from the venture in which they are investing. As a result, the commenter recommended a new safe harbor to protect legitimate investments from the anti-kickback statute.

De Minimis Gifts

A commenter suggested a new safe harbor addressing *de minimis* gifts to beneficiaries for recommending a new customer to the provider. For purposes of this proposal, *de minimis* gifts would be small tokens of a provider's gratitude given to customers and community members who suggest the provider's services or products to other potential customers, consistent with the Internal Revenue Service's definition on limitation on all allowable business gifts. No safe harbor protection would be afforded where gifts, even if *de minimis,* were made to physicians and other practitioners in a position to influence patients.

Physician/Provider Sponsored Organizations

Commenters requested that a new safe harbor be created for physician/provider sponsored organizations (PSOs). The proposed safe harbor would protect payments to or by any provider, provider sponsor or provider service network for services to beneficiaries enrolled by an eligible organization under section 1876 of the Act in accordance with a full-risk or partial-risk contract. The commenter suggested that protection for PSOs would increase patient access to health care services and increase the health care options available to program beneficiaries.

*B. Proposed New OIG Special Fraud Alerts*

Limitation on use of Fraud Alerts

A recommendation was made to limit the use of Special Fraud Alerts to circumstances that raise concerns about serious and clear violations, rather than merely ''questionable'' practices.

Financial Arrangements Between Hospitals and Hospital-Based Physicians

A commenter stated that an increasing number of hospital-based physician agreements with hospitals compensate physicians for less than the fair market value of management and supervisory services they provide to hospitals, or require physicians to pay more than the fair market value for certain services provided by the hospital as a condition for entering into or renewing contracts. As a result, a Fraud Alert was recommended to discuss financial arrangements between hospitals and hospital-based physicians. A second commenter raised concern about the appropriate compensation for hospital-based physicians and physicians serving as medical directors. They recommended a new OIG Fraud Alert addressing services considered integral and not ''incident to'' physician services, and the proper use of nonphysician practitioners accompanied by the appropriate billing for their services.

Ambiguity in Billing Practices

A suggestion was made to provide clear direction regarding covered and non-covered services and appropriate billing practices and, in conjunction with section 231 of the HIPAA, define the term ''pattern of billing for services'' that the provider knew or should have known was not medically necessary. The commenter indicated that any Fraud Alert should specify that no sanctions would be taken for a pattern of billing for services considered to be medically unnecessary until the provider has been given written notice of the problem and an opportunity to desist from the billing practice.

Barring Demands by Medicare Supplemental Carriers for Discounts from Providers

Since Medigap carriers other than Medicare SELECT plans continue to seek discounts or waivers of copayment amounts from providers, it was recommended that the OIG clarify that is improper for Medigap insurers (other than Medicare SELECT in connection with Part A services covered by existing safe harbors) to seek discounts and waivers of Medicare coinsurance or deductible amounts.

Payment Arrangements Between Hospice Providers and Nursing Homes

Concern was voiced over certain compensation arrangements between hospices and nursing facilities, including skilled nursing facilities, that suggested suspect incentive arrangements that disguise referral fees as payments for services to such nursing facilities. A Fraud Alert was suggested to address the fact that when a hospice pays a nursing facility more than 95 percent of the Standard Medicaid Per Diem Reimbursement Rate, such arrangements may violate the anti-kickback statute.

Clinical Laboratory Personnel Within an ESRD Facility

A commenter recommended an amendment to the phlebotomy section of the OIG Special Fraud Alert—''Arrangements for the Provision of Clinical lab Services''—that was issued in October 1994. Under that section, a clinical laboratory's placement of a phlebotomist in a physician's office does not in and of itself serve as an inducement prohibited by the anti-kickback statute. However, the commenter indicated that certain tasks could implicate the statute if those functions that benefit the physician are performed by the phlebotomist. As a result, they proposed that the OIG highlight a similar practice of providing a clinical laboratory employee, or processor, to an ESRD facility on a full-time basis to relieve the facility of these duties.

Laboratory Contracting with Billing Management Consultants

It was suggested that a Fraud Alert be developed outlining the potential issues related to contracting with billing management consultants, the appropriate relationship between the facility and the consultants, and the liability of all parties involved in the contract.

Discounted Copayments and Deductibles

In light of new civil money penalty authority for Medicare providers who offer incentives to induce Medicare referrals, it was recommended that a Fraud Alert be developed addressing situations in which a copayment or deductible can be discounted.

Home Health Issues

With regard to the proper certification of Medicare beneficiaries for home health services, a recommendation was made to develop a Fraud Alert defining what is considered ''home bound'' and what actions should be taken to ensure that the beneficiary is appropriately certified and is eligible for home health services. The commenter also recommended that a Fraud Alert address home health agency procedures related to contacting patients upon discharge from the hospital, and claims for home health visits that occur prior to physician authorization for the visit.

Medicare as Secondary Payer

A commenter indicated that if primary coverage is not identified, Medicare may be billed inappropriately, thus leading to allegations of fraudulent billing. The commenter recommended a new Fraud Alert setting forth the appropriate process to determine primary coverage, and the level of diligence a facility must use to verify primary coverage.

Hospice Care

A new Fraud Alert was recommended outlining the appropriate method for determining life expectancy to meet hospice eligibility criteria, and the responsibility if a patient is subsequently found ineligible for hospice benefits due to an incorrect determination of life expectancy. It was also suggested that the Fraud Alert address billing issues associated with a hospice patient who is transferred to a hospital, and the instances when a hospital should bill the hospice instead of Medicare to avoid duplicate bills to Medicare for the same patient.

Hospital Issues

It was suggested that problems have occurred with PPS hospitals billing Medicare for discharging a patient when the patient was actually transferred to another PPS hospital or unit, and that the OIG develop a Fraud Alert outlining instances in which a hospital may bill Medicare for a patient discharge and when the hospital must file a claim as a transfer.

Value Added Services

A new Fraud Alert was recommended to address concerns about vendors in the food service industry offering ''value added services'' to their institutional customers. The commenter stated that many of these practices, intended to induce the initiation or maintenance of a business relationship between parties, raised concerns under the anti-kickback statute since food service sold to health care institutions is reimbursed in part by Medicare and the State health care programs.

Further public comments on the proposals summarized above are *not* being solicited at this time.

## III. Solicitation of Additional New Recommendations and Proposals

In accordance with the requirements of section 205 of Public Law 104–191, we are seeking additional recommendations from affected provider, practitioner, supplier and beneficiary representatives regarding the development of proposed or modified safe harbor regulations and new Special Fraud Alerts beyond those summarized above.

*Criteria for Modifying and Establishing Safe Harbor Provisions*

In accordance with the statute, we will consider a number of factors in reviewing proposals for new or modified safe harbor provisions, such as the extent to which the proposals would effect an increase or decrease in—

- Access to health care services;
- The quality of care services;
- Patient freedom of choice among health care providers;
- Competition among health care providers;
- The cost to Federal health care programs;
- The potential overutilization of the health care services; and
- The ability of health care facilities to provide services in medically underserved areas or to medically underserved populations.

In addition, we will also take into consideration the existence (or nonexistence) of any potential financial benefit to health care professionals or providers that may vary based on their decisions of whether to (1) order a health care item or service, or (2) arrange for a referral of health care items or services to a particular practitioner or provider.

*Criteria for Developing Special Fraud Alerts*

In determining whether to issue additional Special Fraud Alerts, we will also consider whether, and to what extent, those practices that would be identified in new Fraud Alerts may result in any of the consequences set forth above, and the volume and frequency of the conduct that would be identified in these Special Fraud Alerts.

A detailed explanation of justification or empirical data supporting the suggestion, and sent to the address indicated above, would prove helpful in our considering and drafting new or modified safe harbor regulations and Special Fraud Alerts.

Dated: December 1, 1997.

**June Gibbs Brown,**

*Inspector General.*

[FR Doc. 97–32150 Filed 12–9–97; 8:45 am]

BILLING CODE 4150–04–P

## FEDERAL COMMUNICATIONS COMMISSION

## 47 CFR Part 32

**[CC Docket No. 97–212; FCC 97–355]**

## Uniform System of Accounts for Interconnection

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** In this document, we propose rules for the accounting treatment of transactions related to interconnection and shared infrastructure. Specifically, we propose new Part 32 accounts and subsidiary recordkeeping requirements to record the revenues and expenses related to providing and obtaining interconnection. We tentatively conclude that new accounts are not necessary to record the revenues and expenses associated with sharing infrastructure.

**DATES:** Interested parties may file comments on or before December 10, 1997, and reply comments on or before January 26, 1998. Written comments by the public on the proposed and/or modified information collections are due December 10, 1997. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed and/or modified information collections on or before February 9, 1998.

**ADDRESSES:** Parties should send their comments or reply comments to Office of the Secretary, Federal Communications Commission, 1919 M Street, NW., Room 222, Washington, DC 20554. Parties should also send a paper copy, and a copy on 3.5 inch diskette formatted in an IBM compatible form using, if possible, WordPerfect 5.1 for Windows software, to Matthew Vitale of the Common Carrier Bureau's Accounting and Audits Division, 2000 L Street, NW., Room 200F, Washington, DC 20554. Commenters should also provide one copy of any documents filed in this proceeding to the Commission's copy contractor, International Transcription Service, 1231 20th Street, NW., Washington, DC 20036.

In addition to filing comments with the Secretary, a copy of any comments on the information collection contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 234, 1919 M Street, NW., Washington, DC 20554, or via the Internet at jboley@fcc.gov, and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725 17th Street, NW., Washington, DC 20503 or via the Internet to fain__t@al.eop.gov.

**FOR FURTHER INFORMATION CONTACT:** Matthew Vitale, Accounting and Audits Division, Common Carrier Bureau, (202) 418–0866.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rulemaking adopted October 2, 1997, and released October 7, 1997. The full text of this Commission notice is available for inspection and copying during normal business hours in the FCC Public Reference Room (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may be purchased from the Commission's copy contractor, International Transcription Service, 1231 20th Street, NW., Washington, DC 20036.

**Paperwork Reduction Analysis**

This notice contains a proposed or modified information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collections contained in this Notice, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13. Public and agency comments are due at the same time as other comments on this notice; OMB notification of action is due 60 days from date of publication of this Notice in the **Federal Register**. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of information collection; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

*OMB Approval Number:* None.

*Title:* Amendments to Uniform Systems of Accounts for Interconnection, Notice of Proposed Rulemaking, CC Docket No. 97–212.

*Form No.:* N/A.

*Type of Review:* New Collection.

*Respondents:* Businesses or other for profit.

*Proposed Collections:*

| | # Respondents | Est. time per response (hours) | Total annual burden (hours) |
|---|---|---|---|
| a. New Accounts | 68 | 40 | 2,720 |
| b. Subsidiary Accounting Records | 68 | 120 | 8,160 |
| c. Cost Study | 68 | 160 | 10,880 |

*Total Annual Burden:* 21,760.

*Estimated Costs Per Respondent:* $0.

*Needs and Uses:* In this Notice of Proposed rulemaking issued in CC Docket No. 97–212, the Commission initiates a proceeding with the goal of reviewing comprehensively our Part 32 procedures dealing with the accounting treatment of transactions related to interconnection and shared infrastructure to ensure that they meet the objectives of the 1996 Act. The Commission seeks comment on a proposal establishing new Part 32 accounts and subsidiary recordkeeping requirements to record the revenues and expenses related to providing and obtaining interconnection. The Commission also seeks comment on the conclusion that new accounts are not necessary to record the revenues and expenses associated with sharing infrastructure.

**Regulatory Flexibility Analysis**

This Notice proposes new revenue and expense accounts for ILECs to record the revenues they receive and the amounts they pay in the sale and purchase of interconnection, access to unbundled network elements, transport and termination of traffic, and resale of telecommunications services. Section 603 of the Regulatory Flexibility Act (RFA), as amended,[1] requires an initial Regulatory Flexibility Act Analysis in notice-and-comment rulemaking proceedings unless we certify that ''the rule will not, if promulgated, have a significant economic impact on a significant number of small entities.'' [2]

The RFA defines the term *small entity* as having the same meaning as *small business concern* under the Small Business Act (SBA),[3] which defines *small business concern* as ''one which is independently owned and operated and which is not dominant in its field of operation.'' [4] Section 121.201 of the SBA regulations defines small telecommunications entities in SIC Code 4813 (Telephone Communications, Except Radiotelephone) as any entity with fewer than 1,500 employees at the holding company level.[5] Some entities employing fewer than 1500 employees at the holding company level may be affected by the proposals made in this Notice. However, we do not consider such entities to be ''small entities'' under the RFA because they are either affiliates of large corporations or dominant in their field of operations. Therefore, we do not believe that the proposed rules will affect a substantial number of small entities.

Even if the small ILECs were ''small entities'' under the SBA, we would still certify that no regulatory flexibility analysis is necessary here because none of the proposals in this Notice, if adopted, would have a significant economic impact on the carriers which must comply with our accounting rules. Pursuant to long-standing rules, ILECs must record the revenues and expenses associated with their operations. This Notice merely proposes that new revenue and expense accounts be established so that the amounts pertaining to interconnection and infrastructure sharing will be uniformly reported. This procedure will be easy for ILECs to implement and will not require costly or burdensome analysis.

We therefore certify, pursuant to section 605(b) of the RFA that the rules proposed in this Notice will not have a significant economic impact on a substantial number of small entities.

**Ordering Clause**

Accordingly, *it is ordered* that, pursuant to sections 1, 2, 4, 201–205, 215, 218, 220, 229, 254, and 410 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154,

[1] 5 U.S.C. 603.

[2] *Id.* 605(b).

[3] *Id.* 601(6) adopting 15 U.S.C. § 632(a)(1).

[4] 15 U.S.C. 632(a)(1).

[5] 13 CFR 121.201.

201–205, 215, 218, 220, 229, 254 and 410 that *notice is hereby given* of proposed amendments to Part 32 of the Commission's rules, 47 CFR part 32, as described in this *notice of proposed rulemaking.*

**List of Subjects in 47 CFR Part 32**

Uniform System of Accounts.

Federal Communications Commission.

**Magalie Roman Salas,**

*Secretary.*

[FR Doc. 97–32223 Filed 12–9–97; 8:45 am]

BILLING CODE 6712–01–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Parts 600 and 648

**[I.D. 112897A]**

### Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Applications for Experimental Fishing Permits (EFPs)

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notification of experimental fishery proposal; request for comments.

**SUMMARY:** NMFS issues this notice to announce that the Regional Administrator, Northeast Region, NMFS is considering approval of an experimental fishing proposal that would allow vessels to conduct operations otherwise restricted by regulations governing the Fisheries of the Northeastern United States. The experimental fishery would involve fishing for, retention, and limited landing of Atlantic sea scallops with a modified sea scallop dredge in Southern New England and Mid-Atlantic Regulated Mesh Areas. Regulations under the Magnuson-Stevens Act provisions require publication of this notice to provide interested parties the opportunity to comment on the proposed experimental fishery.

**DATES:** Comments on this notice must be received by December 29, 1997.

**ADDRESSES:** Comments should be sent to Andrew A. Rosenberg, Ph. D., Regional Administrator, NMFS, Northeast Regional Office, 1 Blackburn Drive, Gloucester, MA 01930. Mark on the outside of the envelope ''Comments on Proposed Experimental Fishery.''

**FOR FURTHER INFORMATION CONTACT:** Peter Christopher, Fishery Management Specialist, 978–281–9288.

**SUPPLEMENTARY INFORMATION:** The Virginia Institute of Marine Science submitted an application for an EFP on October 17, 1997, to investigate summer flounder bycatch by Atlantic sea scallop dredges. An experimental dredge would be modified with large mesh on the upper portion of the dredge to allow for summer flounder escapement. Fishing activity would target a limited amount of Atlantic sea scallops in the Southern New England and Mid-Atlantic Regulated Mesh Areas.

The Virginia Institute of Marine Science would conduct experimental fishing activities on chartered fishing vessels. EFPs are required to exempt vessels from possession limits, gear restrictions, and days-at-sea restrictions of the Atlantic Sea Scallop Fishery Management Plan.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: December 4, 1997.

**Gary C. Matlock,**

*Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 97–32337 Filed 12–9–97; 8:45 am]

BILLING CODE 3510–22–F

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Parts 600 and 648

**[I.D. 112897B]**

### Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Applications for Experimental Fishing Permits (EFPs)

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notification of experimental fishery proposal; request for comments.

**SUMMARY:** NMFS issues this notice to announce that the Regional Administrator, Northeast Region, NMFS (Regional Administrator), is considering approval of an experimental fishing proposal that would permit vessels to conduct operations otherwise restricted by regulations governing the Fisheries of the Northeastern United States. The experimental fishery would involve the possession and retention of *Crangon* shrimp (brown shrimp), including the possible capture and release of regulated multispecies, in the Gulf of Maine/Georges Bank Regulated Mesh Area. Regulations under the Magnuson-Stevens Act provisions require publication of this notice to provide interested parties the opportunity to comment on the proposed experimental fishery.

**DATES:** Comments on this notice must be received on or before December 29, 1997.

**ADDRESSES:** Comments should be sent to Andrew A. Rosenberg, Ph.D., Regional Administrator, NMFS, Northeast Regional Office, 1 Blackburn Drive, Gloucester, MA 01930. Mark on the outside of the envelope ''Comments on Proposed Experimental Fisheries.''

**FOR FURTHER INFORMATION CONTACT:** Bonnie VanPelt, Fishery Management Specialist, (978) 281–9244.

**SUPPLEMENTARY INFORMATION:** The Maine Department of Marine Resources (MEDMR) has been approved for a Saltonstall/Kennedy (S/K) Grant to investigate the feasibility of developing a 3-month winter *Crangon septemspinosus* shrimp (brown shrimp) fishery between Frenchman's Bay and Casco Bay, Maine, in nearshore and estuarine waters. The two main objectives of the proposed project are the use of gear technology to address regulatory species bycatch and the development of a sustainable fishery that will ease financial hardship by absorbing displaced groundfishing effort. New gears and fishing methods will be employed based on technology of a similar *Crangon* shrimp fishery that exists in Europe, as well as on a modification of the gear technology currently used in the northern shrimp fishery.

The MEDMR submitted an application for an EFP to conduct the proposed project on October 14, 1997. The experimental trawl surveys are proposed for January through June 1998. The proposed experiment will allow approximately three commercial fishing vessels to conduct gear trials using a *Crangon* otter trawl, an otter trawl of European design, and two beam trawl nets with mesh sizes of 20 mm. One otter trawl will be assembled with a Nordmore grate (physical separator) and the other with a bycatch reduction device known as a false upper (behavioral separator), while the beam trawl nets will contain a finfish excluder device called a sieve. Bar spacing of the Nordmore grate will be 1/2 inch (1.27 cm), smaller than the 1 inch (2.54 cm) now being used in the northern shrimp fishery. All trawl gear is designed to enable finfish to escape through a hole in the lower panel of the net. Experimental gear performance will be tested with control otter trawl nets of 20 mm stretched mesh with 1/4 inch (0.635 cm) mesh liners and 20 mm beam trawl nets. Trawl effectiveness will be

compared using a random block design and analysis of variance techniques. Five survey tows at each of the six designated sample areas will be conducted once a month from January through March and extended until June, if necessary. Sample stations will be limited to depths of less than 35 fathoms (19.13 m) within the project sample area. Finfish bycatch during the proposed winter sampling period is expected to be low as determined by previous finfish sampling surveys. Smelt, winter flounder, and sticklebacks are the species most likely to concentrate in the nearshore areas. Finfish bycatch will be documented and then discarded after some commercial finfish species stomach samples are taken. Although the survey tows are expected to collect limited numbers of regulated species, some level of entrapment may help assess the effectiveness of bycatch reduction devices and gear modifications. The survey will also help to determine population densities of both juvenile and commercially harvested adult *Crangon*, percent distribution within samples areas, and seasonal distribution patterns. All catches of *Crangon* will be frozen and saved for processing trials. Commercial sized *Crangon* will be processed by facilities in Maine that will handle the peeling, packaging, cooking, and presentation of product samples to foreign buyers to compare with European *Crangon* market products.

EFPs would be issued to the participating vessels to exempt them from the mesh size, minimum fish size, and days-at-sea restrictions of the Northeast Multispecies Fishery Management Plan.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: December 4, 1997.

**Gary C. Matlock,**

*Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 97–32338 Filed 12–9–97; 8:45 am]

BILLING CODE 3510–22–F

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 622

**[Docket No. ; I.D. 120497C]**

**RIN 0648–AK28**

## Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Red Snapper Minimum Size Limit

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Proposed rule, request for comments.

**SUMMARY:** NMFS issues this proposed rule to implement the provisions of a regulatory amendment prepared by the Gulf of Mexico Fishery Management Council (Council) in accordance with framework procedures for adjusting management measures of the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). This proposed rule would maintain the current minimum size limit for red snapper of 15 inches (38.1 cm), total length (TL). Under the present regulations, the minimum size limit would increase to 16 inches (40.6 cm), TL, on January 1, 1998. The intended effect of this proposed rule is to maximize the economic benefits from the red snapper resource within the constraints of the rebuilding program for this overfished resource.

**DATES:** Written comments must be received on or before December 29, 1997.

**ADDRESSES:** Comments on the proposed rule must be sent to Peter Eldridge, Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702.

Requests for copies of the framework regulatory amendment, which includes an environmental assessment and a regulatory impact review (RIR) should be sent to the Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619–2266; Phone: 813–228–2815; Fax: 813-225–7015.

**FOR FURTHER INFORMATION CONTACT:** Peter Eldridge, 813–570–5305.

**SUPPLEMENTARY INFORMATION:** The reef fish fishery in the Exclusive Economic Zone of the Gulf of Mexico is managed under the FMP. The FMP was prepared by the Council and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act by regulations at 50 CFR part 622.

The Council has proposed an adjusted management measure (a regulatory amendment) for the Gulf red snapper fishery for NMFS' review, approval, and implementation. This measure was developed and submitted to NMFS under the terms of the FMP's framework procedure for annual adjustments in total allowable catch and related measures for the red snapper fishery (framework procedure). The proposed rule would implement the measure contained in the Council's regulatory amendment.

### Red Snapper Minimum Size Limit

The red snapper resource in the Gulf of Mexico is overfished and is currently under a management program to restore the stock to a threshold level of 20–percent spawning potential (SPR) by the year 2019. Amendment 5 to the FMP established a gradual increase in the recreational and commercial minimum size limit for red snapper, from 13 inches (33.0 cm), TL, to 14 inches (35.6 cm), TL, in 1994, 15 inches (38.1 cm), TL, in 1996, and 16 inches (40.6 cm), TL, in 1998. Amendment 5 noted that this action would increase the yield-per-recruit obtained from the fishery provided that the potential gains were not negated from additional release mortality of undersized fish.

The 1997 red snapper stock assessment evaluated the impact of increases in the minimum size through a series of simulations. The assessment concluded that under the constant catch scenario, as presently implemented, an increase in minimum size limit from 15 inches (38.1 cm) to 16 inches (40.6 cm), TL, would have little, if any, effect on the SPR value in the year 2019 because of the associated discard mortality. Therefore, it would not contribute to rebuilding the resource. The assessment indicated that as minimum size increases, the portion of the stock that is available to contribute to the yield decreases. Consequently, in these simulations, fishermen would have to fish harder to produce the same yield. This simulated increase in effort in turn would result in more fish being released and, thus, subject to release mortality. The Reef Fish Stock Assessment Panel reviewed the 1997 assessment and concurred with the conclusion that increasing the minimum size from 15 inches (38.1 cm) to 16 inches (40.6 cm), TL, would not be expected to result in biological benefits.

Testimony, to date, from recreational and commercial fishermen has indicated serious concern about additional discard mortality if the

minimum size limit is increased to 16 inches (40.6 cm), TL. Some fishermen have reported that the increase in minimum size would force them to fish further offshore, where discard mortality would be higher because of greater depth. In addition, fishing further offshore would increase fishing costs.

**Classification**

This proposed rule has been determined to be not significant for purposes of E.O. 12866.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce, based on the Council's RIR that assesses the economic impacts of the management measures proposed in this rule on fishery participants, certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities as follows:

The proposed action to maintain the current size limit for red snapper in the Gulf of Mexico will not decrease commercial vessel and for-hire revenues. Without this action the size limit would increase on January 1, 1998, with possible decreases in commercial vessel and for-hire revenues. Since no additional permits or gear modifications are required, there will be no public burden to comply. Since all the impacted firms are small, there is no differential impact. Because the proposed action does not affect a major change in the commercial or the for-hire sector, no additional capital costs are required.

As a result, a regulatory flexibility analysis was not prepared.

**List of Subjects in 50 CFR Part 622**

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: December 5, 1997.

**Gary C. Matlock,**

*Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 622 is proposed to be amended as follows:

## PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as follows:

**Authority:** 16 U.S.C. 1801 *et seq.*

2. In § 622.37, paragraph (d)(3) is revised to read as follows:

**§ 622.37 Minimum sizes.**

* * * * *

(d) * * *

(3) Red snapper—15 inches (38.1 cm), TL.

* * * * *

[FR Doc. 97–32370 Filed 12-5-97; 4:18 pm]

BILLING CODE 3510–22–F

# Notices

**Federal Register**
Vol. 62, No. 237
Wednesday, December 10, 1997

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### [Docket No. FV97–357]

### Information About Legislative Changes in Civil Penalties for a Misrepresentation or Misbranding Violation Under the Perishable Agricultural Commodities Act (PACA)

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Debt Collection Improvement Act of 1996 (Public Law 104–134), this document gives notice to the public of a 10 percent increase in the civil penalties found in § 46.45 of the PACA regulations which outlines the procedures for administering the misrepresentation or misbranding provisions under section 2(5) of the PACA (7 U.S.C. 499b(5)).

**DATE:** December 10, 1997.

**ADDITIONAL INFORMATION:** Contact Charles W. Parrott, Assistant Chief, PACA Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, P.O. Box 96456, Room 2095-South, Washington, D.C. 20090–6456; telephone (202) 720–4180; fax (202) 690–4413.

**SUPPLEMENTARY INFORMATION:** Public Law 104–134, the Debt Collection Improvement Act of 1996, which amended the Federal Civil Penalties Inflation Act of 1990 (Public Law 101–410), requires that all civil monetary penalties be increased periodically to keep pace with inflation. The first adjustment to a penalty may not exceed 10 percent of the original penalty and applies only to those violations occurring after the effective date of the increase, September 2, 1997.

The PACA establishes a code of fair trading practices covering the marketing of fresh and frozen fruits and vegetables in interstate and foreign commerce. The PACA protects growers, shippers, distributors, and retailers dealing in those commodities by prohibiting unfair and fraudulent practices. The Department of Agriculture's Agricultural Marketing Service (AMS) enforces the PACA.

Under section 2(5) of the PACA, it is a violation a commission merchant, dealer, or broker to misrepresent by word, act, mark, stencil, label, statement, or deed, the character, kind, grade, quality, quantity, size, pack, weight, condition, degree, or maturity, or State, country, region of origin of any perishable agricultural commodity received, shipped, sold, or offered to be sold in interstate or foreign commerce. Provided the violations are not repeated or flagrant, the dealer, commission merchant, or broker who violated the misbranding provisions may admit to the violation, or violations, and pay a monetary penalty in lieu of a formal proceeding for the suspension or revocation of its license.

By regulation published in the **Federal Register** (62 FR 40924) on July 31, 1997, the maximum penalty was increased by 10 percent, from $2,000 to $2,200, effective September 2, 1997. In addition to the $2,200 maximum penalty, the PACA regulations (7 CFR 46,45(c)) set forth the sanction policy that includes informal warning letters and lesser monetary penalties that AMS may assess against a dealer, commission merchant or broker for a misbranding violation, depending on the seriousness of the violation and the number of previous violations committed by the violator company. The amended schedule for informal disposition of these violations is as follows:

| VIOLATION: | | DISPOSITION: |
|---|---|---|
| 1st | | Warning Letter |
| 2nd | | Warning Letter |
| | IF SERIOUS VIOLATION: | IF VERY SERIOUS VIOLATION: |
| 3rd | $220 | $275 |
| 4th | $385 | $550 |
| 5th | $550 | $1,100 |
| 6th | $1,100 | $2,200 |
| 7th | $2,200 | $2,200 |

The informal disposition of misrepresentation violations is not limited to seven occurrences and will be considered for further violations.

Dated: December 3, 1997.

**Robert C. Keeney,**

*Deputy Administrator,*

*Fruit and Vegetable Programs.*

[FR Doc. 97–32244 Filed 12–9–97; 8:45 am]

**BILLING CODE 3410–02–P**

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Eagle Bird Project; Idaho Panhandle National Forests, Shoshone County, ID

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of intent to prepare an environmental impact statement.

**SUMMARY:** The St. Joe Ranger District of the Idaho Panhandle National Forest is considering vegetation, road and trail activities in the Eagle Bird Project. The project area is located approximately 13 miles east of the town of Avery on the St. Joe River.

The interdisciplinary team has reviewed the current conditions which indicated the project area could benefit from treatment. The purpose and need is summarized below.

1. Restore properly functioning hydrologic conditions. 2. At the project level, implement the Idaho Governor's Bull Trout Plan. 3. Move vegetation toward historical conditions. 4. Reduce the risk of mountain pine beetle in the

lodgepole pine forest type. 5. Meet wildlife security needs. 6. Restore rare vegetation communities and habitat. 7. Provide a spectrum of recreation opportunities that are appropriate for the National Forest System lands within the area. 8. Provide quality dispersed camping, single-track trail, all terrain vehicle (ATV) route, hunting and fishing opportunities in a roaded natural setting. 9. Promote fire use and control strategies for safety, efficiency of suppression, resource values, and reduce risks. To create a trend toward allowing fires to play a role as a disturbance mechanism. Reduce the risk of stand replacing fires through vegetation management and promote beneficial fire effects. 10. Where feasible and cost effective, contribute to the timber supply by using timber harvest (one or more timber sales) to achieve this and other project objectives. Inasmuch as it is compatible with other objectives, harvest activities will maintain or improve the long term growth and production of commercially valuable wood products from the sites.

The project consists of three main parts. One part is vegetation management, including timber harvesting and associated road construction and prescribed burning. Another part is restoration of stream channel conditions and fish habitat. The third part is recreational trail development.

**DATES:** Comments should be postmarked on or before January 9, 1998. Please include your name and address and the name of the project you are commenting on.

**ADDRESSES:** Submit written comments and suggestions on the proposed management activities or request to be placed on project mailing list to Brad Gilbert, District Ranger, St. Joe Ranger District, HC Box 1, Avery ID 83802. Brad Gilbert is the Responsible Official.

**FOR FURTHER INFORMATION CONTACT:** Cameo Flood, Project Team Leader, St. Joe Ranger District, (208) 245–4517.

Comments received in response to this solicitation, including names and addresses of those who comment, will be considered part of the public record on this proposed action and will be available for public inspection. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments will not have standing to appeal the subsequent decision under 36 CFR parts 215 or 217. Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality. Persons requesting such confidentiality may be granted in only very limited circumstances, such as to project trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality, and where the request is denied, the agency will return the submission and notify the requester that the comments may be submitted with or without name and address within 10 days.

**SUPPLEMENTARY INFORMATION:**

**Vegetation Management**

Vegetation management under this proposal is designed to meet several needs, including providing timber projects to local markets, protecting and enhancing wildlife forage and cover needs, providing for long term growth and yield as directed in the Idaho Panhandle National Forests Forest Plan, increasing fire resiliency, reducing fire hazards, and moving the vegetation to the conditions the area historically had in terms of tree species composition and density. Treatments include:

Approximately 4,900 acres of commercial timber harvesting including commercial thinning, shelterwood preparation and seed cuttings, group shelterwoods, irregular group shelterwoods, and clearcuts. The attached map shows proposed treatment areas by regeneration and intermediate harvest. Regeneration treatments (1850 acres total) would be clearcuts or some of the shelterwood cuts that would take most of the trees off the units, leaving room to regenerate the stands to other species. Intermediate harvests (3056 acres total) are the commercial thinning and irregular cuts that remove some of the undesirable trees and favor the size and types of trees needed to meet vegetation goals.

Approximately 691 acres of brush field burning for maintenance of large, open spaced douglas-fir, ponderosa pine reestablishment and wildlife habitat. Although these areas are not well stocked, commercial harvesting is proposed prior to burning where feasible.

Approximately 15 acres of broadcast burning for white bark pine.

Approximately 218 acres would be treated to create a hazard reduction zone. This treatment would include thinning out the canopy for a width of 150 to 300 feet along a ridge, and removing small trees from the understory.

Approximately 8.4 miles of road construction to access timber harvesting units.

**Stream Channel and Fish Habitat Restoration**

The St. Joe District is considering elimination of either the Eagle Creek or Bird Creek roads, or both, and active work instream to restore natural channel function. In the case of both of the roads being eliminated, an alternative road would be provided to allow recreational access to portions of both streams. If one road is eliminated, recreational and management access would be routed over the other remaining road.

*Eagle Creek Road*

This is the most likely road to eliminate, rehabilitate the riparian area and restore riparian function, because bull trout are currently using this stream and improvements in conditions made there would benefit the fish sooner. The road from the West Fork of Eagle Creek down stream to the St. Joe River would be eliminated and alternate access would be provided by improving a connecting road from the Bird Creek System. Vehicle and ATV access to this 3.5 mile section would be eliminated. Foot, horse, bicycle and most likely motorcycle access would be provided.

*Bird Creek Road*

This stream has been more affected by the riparian road system than Eagle Creek. No bull trout were found here in surveys done this summer, but cutthroat trout are abundant. The upper reaches of the stream would be good bull trout spawning habitat and the lower could be good rearing habitat if the road was removed and instream improvements implemented. If the 2.8 miles of streamside road from the upper bridge to the St. Joe were removed, alternate access would be provided by improving a connecting road from the Eagle Creek system. Vehicle and ATV access to this section would be eliminated. Foot, horse, bicycle and most likely motorcycle access would be provided.

*Both Roads*

If both riparian system roads were removed, alternate access into the area would be developed. This could be over the Turner road system (Road 1281) connected into the upper portion of the Bird Creek system and on into the Eagle Creek System, or some other appropriate access.

There are additional roads that have caused watershed problem that are not in riparian areas. These include specifically, Road 1281 (Turner Peak), Road 1286 (Bluebird) and Road 3638 (Mirror Creek). These roads will be reconstructed where necessary to reduce the hazard of future road failures that would adversely impact the stream.

Part of this portion of the project will be to eliminate or close other roads in the area. These roads are currently closed to public use. Most roads that will not be needed for timber management within ten years or more would have hazardous fills pulled back to the contour, drainage structures removed and be barricaded with a permanent structure. Many of them have been overgrown with brush and trees.

**ATV Trail Development**

The district would like to look at the possibility of designating or developing acceptable ATV routes to provide this recreation opportunity. The Eagle Bird area offers several miles of potential ATV opportunities along existing roads, if those roads were closed to general vehicle traffic and managed as ATV routes. When used in conjunction with open system roads, these routes could offer loop opportunities, as well as connections to the Coeur d'Alene River and Superior Ranger Districts to the north. The attached maps show potential ATV routes on both open and restricted system roads. Following management activities within the area, identified system roads would be closed to general vehicle traffic to provide ATV opportunities. Approximately one mile of single-track trail would also be widened to provide an additional ATV loop opportunity.

**Single-Track Trail Management**

The area would continue to provide single-track trails for mixed use by hikers, horseback riders, mountain bicyclists and motorcyclists. These routes are identified on the attached map.

**Float Trailhead Development**

A float trailhead would be developed on the St. Joe River Road to provide river access for Skookum Canyon, a popular destination for whitewater enthusiasts during high spring runoff. Located at an existing roadside parking area northeast of Tourist Creek, the trailhead would provide a pathway to the river and singing.

**Preliminary Issues**

We expect issues and concerns with this project to include the impacts on wild-life, fish, water quality, and recreation, as well as road construction, clearcutting and economic feasibility. Issues will be developed and analyzed based on public comment and the interdisciplinary team's analysis of effects on resources. Alternatives will be developed to modify or eliminate the impacts from proposed activities and still meet the purpose for this project.

Additionally, some of the vegetation treatment may result in openings of over 60 acres. While we would like comments that would affect alternatives early, comments on the size of openings and their effects will be accepted for 60 days after publication of this notice.

The draft environmental impact statement is expected to be filed with the Environmental Protection Agency (EPA) and available for public review in March 1998. The final environmental impact statement is expected to be completed in May 1998.

The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts and agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental statement stage but that are not raised until after completion of the final environmental statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F 2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concern on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviews may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

The United States Department of Agriculture (USDA) prohibits discrimination in its programs on the basis of race, color, national origin, sex, religion, age, disability, political beliefs, and marital or familial status. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means of communication of program information (braille, large print, audiotape, etc.) should contact USDA's TARGET Center ad (202) 720–2600 (voice and TDD).

To file a complaint, write the Secretary of Agriculture, U.S. Department of Agriculture, Washington, DC 20250, or call 1–800–245–6340 (voice) or 202–720–1127 (TDD). USDA is an equal employment opportunity employer.

Dated: December 1, 1997.

**Bradley Burmark,**

*St. Joe Deputy District Ranger.*

[FR Doc. 97–32313 Filed 12–9–97; 8:45 am]

BILLING CODE 3410–11–M

## DEPARTMENT OF AGRICULTURE

### Grain Inspection, Packers and Stockyards Administration

### Amendment to Certification of Central Filing System—Idaho

The Statewide central filing system of Idaho has been previously certified, pursuant to Section 1324 of the Food Security Act of 1985, on the basis of information submitted by the Idaho Secretary of State, for farm products produced in that State (52 FR 49056, December 29, 1987).

The certification is hereby amended on the basis of information submitted by Pete T. Cenarrusa, Secretary of State, for additional farm products produced in that State as follows:

herbs

This is issued pursuant to authority delegated by the Secretary of Agriculture.

**Authority:** Sec. 1324(c)(2), Pub. L. 99–198, 99 Stat. 1535, 7 U.S.C. 1631(c)(2); 7 CFR 2.18(e)(3), 2.56(a)(3), 55 FR 22795.

Dated: December 3, 1997.

**Tommy Morris,**

*Acting Deputy Administrator, Packers and Stockyards Programs.*

[FR Doc. 97–32321 Filed 12–9–97; 8:45 am]

BILLING CODE 3410–KD–P

## COMMISSION ON CIVIL RIGHTS

### Agenda and Notice of Public Meeting of the South Dakota Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the South Dakota Advisory Committee to the Commission will convene at 1:00 p.m. and adjourn at 3:30 p.m. on Thursday, January 8, 1997, at the Holiday Inn City Center, 100 West 8th Street, Sioux Falls, South Dakota 57104. The purpose of the meeting is to provide orientation for new SAC members and planning for a fair housing workshop.

Persons desiring additional information, or planning a presentation to the Committee, should contact John Dulles, Director of the Rocky Mountain Regional Office, 303–866–1400 (TDD 303–866–1049). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, December 4, 1997.

**Carol-Lee Hurley,**

*Chief, Regional Programs Coordination Unit.*

[FR Doc. 97–32253 Filed 12–9–97; 8:45 am]

BILLING CODE 6335–01–P

## COMMISSION ON CIVIL RIGHTS

### Notice of Cancellation of Public Meeting of the Virginia Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Virginia Advisory Committee to the Commission which was to have convened at 12:00 p.m. and adjourned at 4:00 p.m. on Wednesday, December 17, 1997, the Library of Virginia, 800 East Broad Street, Richmond, Virginia, has been canceled. The original notice for the meeting was announced in the **Federal Register** on December 2, 1997, FR Doc. 97–31476, 62 FR 63696, No. 231.

Persons desiring additional information should contact Ki-Taek Chun, Director of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116).

Dated at Washington, DC, December 4, 1997.

**Carol-Lee Hurley,**

*Chief, Regional Programs Coordination Unit.*

[FR Doc. 97–32252 Filed 12–9–97; 8:45 am]

BILLING CODE 6335–01–P

## DEPARTMENT OF COMMERCE

### Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Agency:* Bureau of Economic Analysis.

*Title:* Initial Report on a Foreign Person's Direct or Indirect Acquisition, Establishment, or Purchase of the Operating Assets, of a U.S. Business Enterprise, Including Real Estate (BE–13); and Report by a U.S. Person Who Assists or Intervenes in the Acquisition of a U.S. Business Enterprise by, or Who Enters into a Joint Venture with, a Foreign Person (BE–14)

*Form Number(s):* BE–13, BE–14.

*Agency Approval Number:* 0608–0035.

*Type Of Request:* Revision of a currently approved collection.

*Burden:* 1,800.

*Number of Respondents:* 1,200.

*Avg Hours Per Response:* 1½ hours.

*Needs And Uses:* The survey obtains comprehensive initial data on new foreign direct investments in the United States. The data are needed to measure the economic significance of new foreign direct investment in the United States, measure changes in such investment, and assess its impact on the U.S. economy.

The data from this survey complement data from BEA's other ongoing surveys of foreign direct investment in the United States, which cover overall operations of U.S. affiliates and the transactions and positions between the U.S. affiliates and their foreign parents. However, compared to these other surveys, the data from the BE–13 survey provide a fuller understanding of the acquisition and establishment of new U.S. affiliates. The data are used by the Office of the U.S. Trade Representative, the International Trade Administration of the Commerce Department, and the Departments of Treasury and State, to carry out U.S. international investment policies. The data are needed by the Council of Economic Advisors, the Federal Reserve Board, and other U.S. Government agencies in the formulation of U.S. international economic policy.

*Affected Public:* Businesses or other for-profit institutions.

*Frequency:* One-time report when a transaction occurs.

*Respondent's Obligation:* Mandatory.

*Legal Authority:* Title 22 U.S.C., Sections 3101–3108, as amended.

*OMB Desk Officer:* Paul Bugg, (202) 395–3093.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5327, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Paul Bugg, OMB Desk Officer, Room 10201, New Executive Office Building, Washington, DC 20503.

Dated: December 4, 1997.

**Linda Engelmeier,**

*Departmental Forms Clearance Officer, Office of Management and Organization*

[FR Doc. 97–32282 Filed 12–9–97; 8:45 am]

BILLING CODE 3510–06–P

## DEPARTMENT OF COMMERCE

### Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Agency:* Bureau of Economic Analysis.

*Title:* Transactions of U.S. Affiliate, Except A U.S.Banking Affiliate, with Foreign Parent (BE–605); and Transactions of U.S. Banking Affiliate with Foreign Parent (BE–605 Bank).

*Form Number(s):* BE–605, BE–605 Bank.

*Agency Approval Number:* 0608–0009.

*Type of Request:* Revision of a currently approved collection.

*Burden:* 19,750 hours.

*Number of Respondents:* 3,950 respondents, 4 responses each per year.

*Avg Hours Per Response:* 1¼ hours.

*Needs and Uses:* The survey collects quarterly sample data on transactions and positions between foreign-owned U.S. business enterprises and their foreign parents. Universe estimates are developed from the reported sample data. The data are needed to compile the

U.S. international transactions and national income and product accounts, and the international investment position of the United States. The data are also needed to measure the economic significance of foreign direct investment in the United States, measure changes in such investment, and assess its importance.

In addition, the data are needed by the Council of Economic Advisors, the Federal Reserve Board, and the Treasury Department in the conduct of U.S. international monetary policy. Such policy must be based upon an informed analysis of current information on cross border transactions, including transactions between U.S. affiliates and their foreign parents. The data are particularly valuable to these agencies because they are collected, analyzed, and published within 90 days after the end of each calendar quarter, allowing data users to see the consequences of changes in economic conditions almost immediately.

*Affected Public:* Businesses or other for-profit institutions.

*Frequency:* Quarterly.

*Respondent's Obligation:* Mandatory.

*Legal Authority:* Title 22 U.S.C., Sections 3101–3108, as amended.

*OMB Desk Officer:* Paul Bugg, (202) 395–3093.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5327, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Paul Bugg, OMB Desk Officer, Room 10201, New Executive Office Building, Washington, DC 20503.

Dated: December 4, 1997.

**Linda Engelmeier,**

*Departmental Forms Clearance Officer, Office of Management and Organization.*

[FR Doc. 97–32283 Filed 12–9–97; 8:45 am]

**BILLING CODE 3510–06–P**

## DEPARTMENT OF COMMERCE

### Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 USC Chapter 35).

*Agency:* Patent and Trademark Office (PTO).

*Title:* Provisional Applications.

*Form Number(s):* PTO/SB/16.

*Agency Approval Number:* 0651–0037.

*Type of Request:* Extension of a currently approved collection.

*Burden:* 200,000 hours.

*Number of Respondents:* 25,000.

*Avg. Hours Per Response:* The PTO estimates that it takes 8 hours for the public to gather, prepare, complete, and submit the provisional application to the PTO.

*Needs and Uses:* Certain provisions in the Paris Convention and the Uruguay Round Agreements give a 12-month filing date advantage to international applications. To prevent this from happening, Congress passed a law calling for a ''provisional application'' that establishes a filing date comparable to international ones. PTO collects information to review and process provisional applications submitted to them.

*Affected Public:* Individuals, businesses or other for-profit organizations, non-profit institutions, farms, Federal agencies or employees, and state, local, or tribal agencies or employees.

*Frequency:* On occasion.

*Respondent's Obligation:* Required to obtain or retain a benefit.

*OMB Desk Officer:* Maya A. Bernstein (202) 395–3785

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5327, 14th and Constitution Avenue, N.W., Washington, D.C., 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication to Maya A. Bernstein, OMB Desk Officer, Room 10236, New Executive Office Building, 725 17th Street, N.W., Washington, D.C., 20503.

Dated: December 3, 1997.

**Linda Engelmeier,**

*Departmental Forms Clearance Officer, Office of Management and Organization.*

[FR Doc. 97–32284 Filed 12–9–97; 8:45 am]

**BILLING CODE 3510–16–P**

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

**[Order No. 935]**

### Grant of Authority for Subzone Status: Abbott Manufacturing, Inc. (Infant Formula, Adult Nutritional Products), Columbus, Ohio

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, by an Act of Congress approved June 18, 1934, an Act ''To provide for the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

Whereas, an application from the Rickenbacker Port Authority, grantee of Foreign-Trade Zone 138, for authority to establish special-purpose subzone status for export activity at the infant formula and adult nutritional products manufacturing plant of Abbott Manufacturing, Inc., in Columbus, Ohio, was filed by the Board on April 9, 1996, and notice inviting public comment was given in the **Federal Register** (FTZ Docket 28–96, 61 FR 17875, 4–23–96); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that approval of the application for export manufacturing is in the public interest;

Now, therefore, the Board hereby grants authority for subzone status at the Abbott Manufacturing, Inc., plant in Columbus, Ohio (Subzone 138C), at the location described in the application, subject to the FTZ Act and the Board's regulations, including § 400.28, and subject to the further requirement that all foreign origin, tariff rate quota dairy products and sugar admitted to the subzone shall be reexported.

Signed at Washington, DC, this 3rd day of December 1997.

**Robert S. LaRussa,**

*Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.*

**John J. Da Ponte, Jr.,**

*Executive Secretary.*

[FR Doc. 97–32355 Filed 12–9–97; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

**[Order No. 937]**

### Grant of Authority for Subzone Status Fossil Partners, L.P.; (Watches, Sunglasses, Accessories) Richardson, Texas

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

*Whereas,* by an Act of Congress approved June 18, 1934, an Act ''To provide for the establishment . . . of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' as amended (19 U.S.C. 81a-81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

*Whereas,* the Board's regulations (15 CFR part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

*Whereas,* an application from the Dallas/Fort Worth International Airport Board, grantee of FTZ 39, for authority to establish special-purpose subzone status at the warehousing/distribution facility (watches, sunglasses and accessories) of Fossil Partners, L.P., in Richardson, Texas, was filed by the Board on March 12, 1997, and notice inviting public comment was given in the **Federal Register** (FTZ Docket 15–97, 62 FR 13595, 3–2–97); and,

*Whereas,* the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that approval of the application is in the public interest;

*Now, therefore,* the Board hereby authorizes the establishment of a subzone (Subzone 39E) at the Fossil Partners, L.P. facility in Richardson, Texas, at the location described in the application, subject to the FTZ Act and the Board's regulations, including § 400.28.

Signed at Washington, DC, this 3rd day of December 1997.

**Robert S. LaRussa,**

*Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.*

**John J. Da Ponte, Jr.,**

*Executive Secretary.*

[FR Doc. 97–32354 Filed 12–9–97; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–405–071]**

### Notice of Preliminary Results of Antidumping Duty Administrative Review: Viscose Rayon Staple Fiber From Finland

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of preliminary results of antidumping duty administrative review.

**SUMMARY:** In response to a request by the petitioners, the Department of Commerce is conducting an administrative review of the antidumping duty order on viscose rayon staple fiber from Finland. The review covers one manufacturer/exporter, Kemira Fibres Oy, during the review period, March 1, 1996, through February 28, 1997.

We invite interested parties to comment on these preliminary results of review. Parties who submit comments in this proceeding are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument.

**EFFECTIVE DATE:** December 10, 1997.

**FOR FURTHER INFORMATION CONTACT:** For further information, please contact Laurel LaCivita or Alexander Amdur at Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 482–4740 or (202) 482–5346, respectively.

**SUPPLEMENTARY INFORMATION:**

#### The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR Part 353 (April 1997).

#### Background

On March 21, 1979, the Treasury Department published in the **Federal Register** (44 FR 17156) the antidumping duty finding on viscose rayon staple fiber from Finland. This finding was revoked on November 7, 1994 (59 FR 55441), effective as of April 1, 1993. The revocation was rescinded on February 22, 1997 (61 FR 6814). On March 28, 1997, the petitioners, Courtalds Fibers Inc. (''Courtalds'') and Lenzing Fibers Corporation (''Lenzing''), requested that the Department of Commerce (''the Department'') conduct an antidumping administrative review of Kemira Fibres Oy (''Kemira''), the only known producer of viscose rayon fiber in Finland, and any related, affiliated, or successor company or companies. On April 24, 1997, we published a notice of initiation of this administrative review covering the period March 1, 1996, through February 28, 1997, (62 FR 19988) for Kemira. We issued a questionnaire on May 20, 1997. We received section A, B and C questionnaire responses from Kemira on July 3, 1997. We issued a supplemental questionnaire on August 15, 1997. We received a supplemental response from Kemira on September 10, 1997. We issued a second supplemental questionnaire on September 22, 1997. Kemira responded to this letter on October 6, 1997. On October 27, 1997, Kemira submitted information concerning sales of VISIL fiber, which it maintains are outside of the scope of the finding.

On August 28, 1997, the Department solicited comments from all interested parties concerning the model match criteria and methodology to be used in this review. It received comments from the petitioners on September 11, 1997 and October 24, 1997, and from the respondent on September 16, 1997 and November 4, 1997.

We conducted a verification of home market and United States sales at Kemira's headquarters in Valkeakoski, Finland from November 3, 1997 to November 7, 1997.

The Department is conducting this administrative review in accordance with section 751(a) of the Act.

#### Scope of Review

The product covered by this review is viscose rayon staple fiber, except solution dyed, in noncontinuous form, not carded, not combed and not otherwise processed, wholly of filaments (except laminated filaments

and plexiform filaments). The term includes both commodity and speciality fiber. This product is currently classifiable under Harmonized Tariff Schedules (HTS) item numbers 5504.10.00 and 5504.90.00. The HTS numbers are provided for convenience and customs purposes. The written description of the scope of the finding remains dispositive.

**Scope Issues**

Kemira claims that short-cut (LK) fibers and semi-viscose fire-retardant (VISIL) fibers are excluded from the scope of the finding, while petitioners claim that they are included.[1]

Specifically, Kemira argues that LK fiber is excluded from the scope of the finding because it is cut in small sizes (specifically, ¼-inch to ½-inch sizes), has a unique production line, and is used by the paper industry, rather than the textile industry. Petitioners claim that the scope of the finding does not limit the definition of rayon staple fiber based on fiber length or end use and that, consequently, LK fiber should be included in the scope of the review.

Kemira claims that VISIL fiber is excluded from the scope of the finding because it is a hybrid fiber containing substantial non-viscose content; and is a patented product that is not produced by any other manufacturer. Kemira also notes that this fiber has been ''finished/laminated with aluminum.'' However, Kemira notes that VISIL fiber is classified for Customs purposes under HTS 5504.10.00, the same tariff classification as viscose rayon staple fiber. The petitioners claim that VISIL fiber should be included within the scope of the finding. They argue that there is nothing in the scope of the finding that limits the applicability of the finding to ''standard'' fiber.

For the purposes of the preliminary results of review, we have included both LK and VISIL fibers within the scope of the finding, and have included sales of both LK and VISIL fibers in our margin analysis. However, because of the complexity of the issues relating to LK and VISIL fibers, the Department is commencing a scope inquiry to determine whether LK and VISIL fibers are covered by the scope of the finding.

**Verification**

We conducted verification of home market and U.S. sales information provided by Kemira using standard verification procedures, including on-site inspection of Kemira's sales and production facility, the examination of relevant sales and financial records, and original documentation containing relevant information.

**Fair Value Comparisons**

To determine whether sales of viscose rayon staple fiber to the United States were made at less than fair value, we compared the export price (EP) or constructed export price (CEP) to the normal value (NV), as described in the ''Export Price'', ''Constructed Export Price'' and ''Normal Value'' sections of this notice. In accordance with section 777A(d)(2), we calculated monthly weighted-average prices for normal value and compared these to individual U.S. transactions. We made corrections to the reported U.S. and home market sales data for clerical errors found at verification, as appropriate.

We excluded certain U.S. sales from our calculations. First, we excluded any zero-priced sample sales in accordance with *NSK LTD., et al* v. *United States,* 969 F. Supp. 34 (CIT 1997). Second, we excluded any sales that were shipped to the United States by a third country reseller if the respondent did not have any reason to know at the time of sale to the reseller that the merchandise was destined for the United States (for a detailed explanation, *see* Concurrence Memorandum, December 1, 1997). Third, we excluded any U.S. sales of entries that were liquidated prior to the period of review (POR), i.e., prior to suspension of liquidation. Such sales were only excluded if we were able to make a direct link to an entry prior to suspension of liquidation (see, e.g., Certain Stainless Steel Wire Rods From France: Final Results of Antidumping Duty Administrative Review, 61 FR 177 (September 11, 1996)).

We excluded a home market sale to an affiliated party because this sale failed to pass the Department's arm's-length test in accordance with 19 CFR 353.45(a) (see Concurrence Memorandum, December 1, 1997).

**Facts Available**

During the current POR, the Department requested that Kemira report all of its home market and U.S. sales of subject merchandise in accordance with the instructions in the questionnaire. Kemira did not report its home market and U.S. sales of second quality and sub-standard merchandise. Kemira stated in its narrative response that it sold second quality and sub-standard merchandise only to customers in Europe. On August 15, 1997, the Department issued a supplemental questionnaire to Kemira, requesting again that Kemira report all sales of viscose rayon fiber that are not specifically excluded from the scope of the finding. In its response to the supplemental questionnaire, Kemira again did not report its home market and U.S. sales of second quality and sub-standard merchandise. In both requests for information, the Department advised Kemira that failing to provide the requested information could result in the application of facts available (FA).

Section 776(a)(2) of the Act provides that if an interested party withholds information that has been requested by the Department, fails to provide such information in a timely manner or in the form requested, significantly impedes a proceeding under the antidumping statute, or provides information that cannot be verified, the Department will use FA in reaching the applicable determination. Kemira failed to report all the information requested by the Department, so the Department will use FA in reaching the margin determination for Kemira's sales of second quality and sub-standard merchandise.

Section 776(b) of the Act provides that adverse inferences may be used with respect to a party that has failed to cooperate by not acting to the best of its ability to comply with requests for information. See also Statement of Administrative Action (SAA) at 870. Kemira's failure to report the sales data requested by the Department, despite two requests for data from the Department, demonstrates that Kemira has failed to cooperate to the best of its ability in this review. Additionally, the Department explicitly told Kemira the possible consequences of not reporting the data. We find that, in selecting among the FA for Kemira, an adverse inference is warranted. Section 776(b) states that an adverse inference may include reliance on information derived from: (1) The petition; (2) the final determination in the LTFV investigation; (3) any previous review under section 751 of the Act or investigation under section 753 of the Act; or (4) any other information placed on the record. See also SAA at 829–831.

Therefore, for sales of second quality and sub-standard merchandise, we are applying as adverse FA, the higher of the margin calculated for Kemira in this review or 8.7 percent, the highest calculated rate for Kemira from any previous segment of the proceeding (*i.e.*, the margin calculated for Kemira in both the investigation and in the first period of review (44 FR 2219, January 10, 1979 and 46 FR 19844, April 1, 1981)).

[1] Kemira also claims that hydrophobic fibers are excluded from the scope of the order, but since Kemira did not sell these fibers in the U.S. during the period of review, we have not addressed this issue.

In the event that we apply as adverse FA the 8.7 percent rate, section 776(c) of the Act provides that when the Department relies on such secondary information in using FA, it must, to the extent practicable, corroborate that information from independent sources reasonably at its disposal. The SAA provides that ''corroborate'' means simply that the Department will satisfy itself that the secondary information to be used has probative value (see SAA at 870). To determine probative value, we examine, to the extent practicable, the reliability and relevance of the information to be used. However, unlike other types of information such as input costs or selling expenses, there are no independent sources for calculated dumping margins. The only source for margins is administrative determinations and reviews. However, if the Department relies on a calculated dumping margin from a prior segment of the proceeding as FA, it is not necessary to question the reliability of the margin. With respect to relevance, the Department will consider information reasonably at its disposal that would render a margin not relevant (see Anhydrous Sodium Metasilicate from France; Preliminary Results of Review, 61 FR 30853 (June 18, 1996)). We have no information indicating that the 8.7 percent rate is inappropriate as FA; therefore, we consider the corroboration requirements satisfied.

**Export Price**

The Department used the EP, as defined in section 772(a) of the Act, where the subject merchandise was sold by the manufacturer or exporter to unaffiliated purchasers in the United States prior to importation and the CEP methodology was not otherwise warranted based on the facts of record. We calculated EP based on packed, delivered prices. We made deductions, where appropriate, for early payment discounts, foreign inland freight, ocean freight, Finnish and U.S. insurance expenses, and brokerage and handling fees in Finland and in the United States, in accordance with section 772(c)(2) of the Act.

**Constructed Export Price**

We calculated CEP, as defined in section 772(b) of the Act, based on packed, delivered prices to unaffiliated purchasers in the United States (the starting price). We found that CEP was warranted for certain sales in the United States that were made (before or after the date of importation) by or for the account of the producer or exporter (*see* Concurrence Memorandum, December 1, 1997). We calculated CEP based on the price to the first unaffiliated customer in the United States. We made deductions from the gross unit price (starting price) for early payment discounts, foreign inland freight, ocean freight, insurance expenses, brokerage and handling, U.S. duty, U.S. brokerage and U.S. inland freight, as appropriate, in accordance with section 772(c)(2)(A) of the Act.

In accordance with section 772(d)(1) of the Act and the Uruguay Round Agreements Act Statement of Administrative Action (SAA at 823–824), we made additional adjustments to the starting price by deducting selling expenses associated with economic activities in the United States, including commissions, warranty, and credit. We allocated the total reported commission for the POR for VISIL fiber sales over the total U.S. sales of VISIL fiber during the POR. We recalculated warranty expenses based on such expenses incurred during the current period (see Calculation Memorandum, December 1, 1997). Finally, we made an adjustment for CEP profit in accordance with sections 772(d)(3) and 772(f) of the Act.

**Normal Value**

*A. Viability*

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating normal value (NV), we compared the respondent's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act. Because the aggregate volume of home market sales of the foreign like product was greater than five percent of the aggregate volume of U.S. sales of the subject merchandise, we found that the home market was viable. Therefore, we have based NV on home market sales.

*B. Model Match*

In accordance with section 771(16) of the Act, we considered all products sold in the home market, fitting the description specified in the ''Scope of Review'' section above, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. The petitioners recommended that we determine home market matches based on the criteria of linear density (denier/decitex), fiber length, luster and end-use. We found that the product model names used by Kemira incorporated all such information. Therefore, where possible, we matched each model sold in the United States with an identical home market model, based on Kemira's product codes, that was sold within the contemporaneous window which extends from three months prior to the U.S. sale until two months after the sale. We found contemporaneous home market sales of identical merchandise for all U.S. sales of non-VISIL. Therefore, we did not establish a model match hierarchy to determine the next most similar model in accordance with section 771(16) of the Act. With respect to U.S. sales of VISIL products for which there were no home market sales of identical merchandise during the contemporaneous window, we matched models based on most similar size and made an adjustment to NV for differences in physical characteristics (difmer). Because Kemira did not provide sufficient supporting documentation for its reported model-specific cost data, we could not determine the actual amount of any difmer. Therefore, as facts available, we made a difmer adjustment equal to twenty percent of the reported variable cost of manufacture (TCOM) of VISIL products sold in the United States. Interested parties are invited to comment on the appropriate difmer adjustment relevant to the sales at issue.

Furthermore, in conducting our margin calculations for Kemira, we discovered a number of VISIL sales for which there were no contemporaneous sales of identical or similar merchandise in the home market.

Since Kemira did not provide constructed value (CV) information, we are unable to calculate a margin for these sales. Therefore, we are compelled to use FA with regard to these sales for the purposes of the preliminary results. As FA we have selected the weighted-average margin calculated for those U.S. VISIL sales with contemporaneous home market matches.

*C. Price-to-Price Comparisons*

We based NV on the prices at which the foreign like products were first sold for consumption in the home market to an unaffiliated party in the usual commercial quantities and in the ordinary course of trade and, to the extent practicable, at the same level of trade as the CEP or EP, in accordance with section 773(a)(1)(B)(i) of the Act. For purposes of this review, we determined that the same level of trade exists for Kemira in both markets (see Concurrence Memorandum, December 1, 1997). Accordingly, pursuant to section 777A(d)(2) of the Act, we compared the EP or CEP of the individual transactions to the monthly weighted-average price of sales of the foreign like product. In accordance with sections 773(a)(1)(B) of the Act, we

reduced home market price by deducting early payment discounts. We increased home market price by U.S. packing costs in accordance with section 773(a)(6)(A) of the Act and reduced it by home market packing costs in accordance with section 773(a)(6)(B) of the Act. In accordance with section 773(a)(6)(C) of the Act and 19 CFR 353.56(a), we made circumstance of sale (COS) adjustments for direct selling expenses, including credit and (recalculated) warranty expenses. In accordance with 19 CFR 353.56(b), we made an offset to NV for U.S. commissions. Since Kemira was not able to quantify the indirect selling expenses incurred for home market sales, the amount of this offset, pursuant to 19 CFR 353.56(b), was the lesser of (the recalculated) home market inventory carrying costs or U.S. commissions (see Concurrence Memorandum and Calculation Memorandum, December 1, 1997). No other adjustments were claimed or allowed.

**Preliminary Results of Review**

As a result of our review, we preliminarily determine the weighted-average dumping margin for the period March 1, 1996, through February 28, 1997 to be as follows:

| Manufacturer | Margin (percent) |
|---|---|
| Kemira Fibres Oy ..... | 13.63 |

*Cash Deposit Requirements*

The following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed company will be that rate established in the final results of this review; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will be 3.9 percent, the ''new shipper'' rate established in the first review conducted by the Department, as explained below.

On March 25, 1993, the Court of International Trade (CIT) in *Floral Trade Council* v. *United States,* 822 F.Supp. 766 (CIT 1993) and *Federal-Mogul Corporation* v. *United States,* 822 F.Supp. 782 (CIT 1993) decided that once an ''all others'' rate is established for a company, it can only be changed through an administrative review. The Department has determined that in order to implement the above-mentioned decisions, it is appropriate to reinstate the ''all others'' rate from the LTFV investigation (or that rate as amended for correction of clerical errors or as a result of litigation) in proceedings governed by antidumping duty orders.

However, in proceedings governed by antidumping findings, unless we are able to ascertain the ''all others'' rate from the Treasury LTFV investigation, the Department has determined that it is appropriate to adopt the ''new shipper'' rate established in the first final results of administrative review published by the Department (or that rate as amended for correction of clerical errors as a result of litigation) as the ''all others'' rate for the purposes of establishing cash deposits in all current and future administrative reviews (see, e.g., Final Results of Antidumping Duty Administrative Review of Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan, 58 FR 64720, (December 9, 1993)).

Therefore, the ''all others'' rate applied is the rate of 3.9 percent from Viscose Rayon Staple Fiber From Finland, Final Results of Administrative Review of Antidumping Finding (46 FR 19844, April 1, 1981), the first review conducted by the Department in which a ''new shipper'' rate (or in this case, a rate for all shipments of the subject merchandise, including new shippers) was established.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of this administrative review.

**Assessment Rates**

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between export price and NV may vary from the percentages stated above. The Department will issue appraisement instructions directly to the U.S. Customs Service upon completion of this review. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties. For assessment purposes, we intend to calculate importer-specific assessment rates for viscose rayon staple fiber. For both EP and CEP sales, we will divide the total dumping margins (calculated as the difference between NV and EP (or CEP)) for each importer) by the entered value of the merchandise. Upon the completion of this review, we will direct Customs to assess the resulting *ad valorem* rates against the entered value of each entry of the subject merchandise by the importer during the POR.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Parties to the proceeding may request disclosure within 5 days of the date of publication of this notice. Any interested party may request a hearing within 10 days of the date of publication of this notice. A hearing, if requested, will be held 44 days from the date of publication of this notice at the main Commerce Department building.

Interested parties are invited to comment on these preliminary results. In accordance with 19 CFR 353.38, case briefs from interested parties are due within 30 days of publication of this notice. Rebuttal briefs, limited to the issues raised in the respective case briefs, may be submitted no later than 37 days of publication of this notice. Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument. The Department will subsequently publish the final results of this administrative review, including the results of its analysis of issues raised in any such written briefs or hearing. The Department will issue final results of this review within 120 days of publication of these preliminary results.

Interested parties who wish to request a hearing or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, Room B–099, within ten days of the date of publication of this notice. Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; (3) a list of issues to be discussed. In accordance

with 19 CFR 353.38(b), issues raised in hearings will be limited to those raised in the respective case briefs and rebuttal briefs.

This administrative review and notice are in accordance with section 751(a)(1) of the Act and 19 CFR 353.22(c)(5).

Dated: December 1, 1997.

**Robert S. LaRussa,**

*Assistant Secretary for Import Administration.*

[FR Doc. 97–32356 Filed 12–9–97; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

### Overseas Trade Missions: 1988 Trade Missions (February Through September) Application Opportunity

**AGENCY:** US Department of Commerce (DOC), International Trade Administration (ITA).

**ACTION:** Notice.

**SUMMARY:** This notice serves to inform the public of the opportunity to apply to participate in a number of trade missions to be held between December 1997 and September 1998.

**DATES:** Applications should be submitted to the Project Officer indicated for the specific mission of interest by the closing date specified in each mission statement. Applications received after the closing date will be considered only if space and scheduling constraints permit.

**ADDRESSES AND REQUESTS FOR FURTHER INFORMATION:** Requests for further information and for application forms should be addressed to the Project Officer for each trade mission indicated below. Information is also available via the International Trade Administration's (ITA) internet homepage at ''http://www.ita.doc.gov/uscs/doctm.'' Numbers listed in this notice are not toll-free. An original and two copies of the required application materials should be sent to the Project Officer. Applications sent by facsimile must be immediately followed by submission of the original application.

**SUPPLEMENTARY INFORMATION:** The Department of Commerce invites U.S. companies to apply to participate in a number of trade missions to be held between February and September 1998. For a more complete description of the trade mission, obtain a copy of the mission statement from the Project Officer indicated below. The recruitment and selection of private sector participants for these missions will be conducted according to the Statement of Policy Governing Department of Commerce Overseas Trade Missions announced by Secretary Daley on March 3, 1997.

TASBI Healthcare Technologies Matchmaker, United Kingdom, Italy, Spain and Greece, February 12–24, 1998. Recruitment Closes: December 19, 1997.

Contact information: Yvonne Jackson, Tel: (202) 482–2675/Fax: (202) 482–0178.

Health Industries Reverse Trade Mission from Russia to Los Angeles, CA, February 21–27 1998. Recruitment Closes: February 1, 1998.

Contact information: Jeffrey Gren, Tel: (202) 482–2587/Fax: (202)482–0975.

Saudi Businesswomen Reverse Trade Mission to New York City and Chicago, April 29–May 6, 1998. Recruitment Closes: March 22, 1998.

Contact information: Isabella Cascarano, ODO, Tel: (202)482–2488/Fax:. (202)482–0687.

US Computer Industry Trade Mission to Beijing, Shanghai, Guangzhou, Shenzhen and HK, China, May 6–15, 1998. Recruitment Closes: March 7, 1998.

Contact information: Bryan Larson, Office of Computers and Business Equipment. Tel: (202)482–1987/Fax: (202)482–0943. E-mail: Bryan–Larson@ita.doc.gov.

Women in Trade Business Development Mission, Milan, Italy, Madrid, Spain, May 10–15, 1998. Recruitment Closes: April 1, 1998.

Contact information: Ms. Loretta Allison, Women In Trade Business Development Missions. Telephone: (202)482–5479/Facsimile: (202)482–1999.

E'' Award Business Development Mission to Vietnam and Brunei, Hanoi, Ho Chi Minh City and Bandar Seri Begawan, April 6–13, 1998. Recruitment Closes: March 1, 1998.

Contact information: James Price, Tel: (202)482–5658/Fax: (202)482–1999.

Architecture, Contruction and Engineering Matchmaker Trade Delegation, April 20–24, 1998. Recruitment Closes: February 27, 1998.

Contact information: Sam Dhir, Tel: (202)482–4756/Fax: (202)482–0178.

Spring ''98 High-Tech Dealmaker, Ottawa, Canada. June 2–4, 1998. Recruitment Closes: March 31, 1998.

Contact information: Deborah Anderson, Telephone: (202)482–2736/Facsimile: (202)501–4585.

TASBI Franchising Matchmaker Trade Delegation, Italy, Spain, Portugal and Greece, June 15–26, 1998. Recruitment Closes: April 30, 1998.

Contact information: Sam Dhir, Tel: (202)482–4756/Fax: (202)482–0178.

Safety and Security Matchmaker Trade Delegation, Chile and Venezuela, June 22–26, 1998 (Optional Spin-off to Guayaquil, Ecuador). Recruitment Closes: May 8, 1998.

Contact information: Gordon Keller, Tel: (202)482–1793/Fax: (202)482–0178.

Healthcare Technologies Matchmaker Trade Delegation, Philippines, Indonesia, Malaysia, July 23–31, 1998. Recruitment Closes: June 12, 1998.

Contact information: Gordon Keller, Tel: (202)482–1793/Fax: (202)482–0178.

Plastics Industry Mission to Mexico City–Monterrey, Mexico, September 8–11, 1998.

Contact information: Kim Copperthite, Office of Metals, Materials, and Chemicals. Recruitment Closes: August 7, 1998. Tel: (202)482–5124/Facsimile: (202)482–2565.

**Authority:** 15 U.S.C. 1512.

Dated: December 4, 1997.

**Molly C. Costa,**

*Acting Director, US&FCS/Office of Public/Private Initiatives.*

[FR Doc. 97–32235 Filed 12–9–97; 8:45 am]

BILLING CODE 3510–25–P

## DEPARTMENT OF COMMERCE

### National Institute of Standards and Technology

### Announcement of an Opportunity to Join a Cooperative Research and Development Consortium for CD-Metrology Below 0.25 Microns

**AGENCY:** National Institute of Standards and Technology, Commerce.

**ACTION:** Notice of public meeting.

**SUMMARY:** The National Institute of Standards and Technology invites interested parties to attend a meeting on January 9, 1998, to discuss setting up a cooperative research consortium. The goal of the consortium is to achieve commercially available reference standards to support CD-metrology for feature linewidths below 0.25 microns. Parties participating in the consortium will be loaned (110) and (100) BESO1 chips and asked to perform a selection of CD measurements.

**DATES:** The Meeting will take place at 10 a.m. on January 9, 1998. Interested parties should contact NIST to confirm their interest at the address, telephone number or FAX number shown below.

**ADDRESSES:** The meeting will take place at and inquiries should be sent to Room B360, Building 225, National Institute of Standards and Technology, Gaithersburg, MD 20899–0001.

**FOR FURTHER INFORMATION CONTACT:** Michael W. Cresswell, Telephone: 301–975–2072; FAX: 301–948–4081.

**SUPPLEMENTARY INFORMATION:** The program will be within the scope and confines of the Federal Technology Transfer Act of 1986 (Public Law 99–502, 15 U.S.C. 371Oa), which provides federal laboratories including NIST, with the authority to enter into cooperative research agreements with qualified parties. Under this law, NIST may contribute personnel, equipment, and facilties—but no funds—to the cooperative research program.

Members will be expected to make a contribution to the consortium's efforts in the form of personnel, data, and/or funds. This is not a grant program.

NIST and Sandia National Laboratories have successfully fabricated and tested prototypes of a new class of reference materials to support CD-metrology below 0.25 m. This work has the long-term goal of the commercial availability of certified physical standards traceable to NIST. As a result of the multiple requests for sample prototypes for evaluative purposes that it received, NIST formed an industry consortium to maximize the benefits of exchanging independent measurement results. That previous consortium ended in July 1997. The proposed consortium will last through July 1998.

Dated: December 4, 1997.

**Elaine Bunten-Mines,**

*Director, Program Office.*

[FR Doc. 97–32342 Filed 12–9–97; 8:45 am]

**BILLING CODE 3510–13–M**

## CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

### Proposed Information Collection: Comment Request

**ACTION:** Notice.

**SUMMARY:** The Corporation for National and Community Service (CNCS) as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. § 3508(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirement on respondents can be properly assessed. Currently, the Corporation for National and Community Service is soliciting comments concerning its proposed National Service Enrollment Form (NSEF), and its National Service Member Exit Form (NSMEF). Copies of the information collection requests can be obtained by contacting the office listed below in the address section of this notice.

The Corporation for National and Community Service is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

**DATES:** Written comments must be submitted to the office listed in the addresses section within 60 days of the date of this notice.

**ADDRESSES:** Send comments to Office of Evaluation, Lance Potter, Director, Corporation for National and Community Service, 1201 New York Ave., N.W., Washington, D.C., 20525.

**FOR FURTHER INFORMATION CONTACT:** Lance Potter, (202) 606–5000, ext. 448.

**SUPPLEMENTARY INFORMATION:**

### Part I. (National Service Enrollment Form (NSEF)

*I. Background*

The Corporation for National and Community Service proposes the revision of the Participant Enrollment Form (OMB3200–0018) which has been revised to incorporate elements from the National Service Trust Enrollment Form (OMB3045–0006) in an effort to reduce burden and facilitate data collection. The new form is called the Corporation for National Service Enrollment Form, and eliminates the need to distribute the National Service Trust Enrollment Form. This new form will be the direct source of information that the Corporation collects from its members. It will also function as a legal certification to the National Service Trust that a Member is enrolled.

*II. Current Action*

The Corporation for National and Community Service seeks three-year approval of the use of this new form. Emergency approval was granted in June 1997.

*Type of Review:* Revision.

*Agency:* Corporation for National and Community Service.

*Title:* National Service Enrollment Form (NSEF).

*OMB Number:* 3045–0006.

*Agency Number:* None.

*Affected Public:* Individuals and not-for-profit institutions.

*Total Respondents:* 31,000.

*Frequency:* Annually.

*Average Time Per Response:* 7 minutes.

*Estimated Total Burden Hours:* 3617 hours.

*Total Burden Cost (capital/startup):* 0.

*Total Burden Cost (operating/maintenance):* 0.

### Part II. (National Service Member Exit Form (NSMEF)

*I. Background*

The Corporation for National and Community Service has revised the Member Exit Form (OMB3045–0015) to incorporate elements from the National Service Trust End of Term Form (OMB3045–0009) in an effort to reduce the burden and facilitate data collection. The form is now called the Corporation for National Service End of Term/Exit Form and eliminates the need to distribute the National Service Trust End of Term Form. The End of Term/Exit Form is one of the only two direct sources of information that the Corporation collects from its Members. The purpose of the End of Term/Exit Form is to function as a legal certification that a Member has satisfied the requirements to qualify for an education award.

*II. Current Action*

The Corporation for National and Community Service seeks approval of the Corporation for National Service End of Term/Exit Form for which emergency approval was given in June 1997.

*Type of Review:* Revision.
*Agency:* Corporation for National and Community Service.
*Title:* National Service Exit Form (NSEF).
*OMB Number:* 3045–0015.
*Agency Number:* None.
*Affected Public:* Individuals and not-for-profit institutions.
*Total Respondents:* 31,000.
*Frequency:* Annually.
*Average Time Per Response:* 12 minutes.
*Estimated Total Burden Hours:* 6200 hours.
*Total Burden Cost (capital/startup):* 0.
*Total Burden Cost (operating/maintenance):* 0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: December 3, 1997.

**Lance Potter,**

*Director, Office of Evaluation.*

[FR Doc. 97–32286 Filed 12–9–97; 8:45 am]

**BILLING CODE 6050–28–P**

## DEPARTMENT OF DEFENSE

### Defense Information Systems Agency

### Notice of Availability of the Consolidation and Regionalization Plan, Finding of No Significant Impact (FONSI), and Associated Environmental Assessment (EA) for the Defense Information Systems Agency (DISA) Defense Megacenters (DMCs) and Related Facilities

**AGENCY:** Defense Information Systems Agency (DISA).

**ACTION:** Notice.

**SUMMARY:** The Defense Information Systems Agency (DISA) is announcing that it has prepared an Environmental Assessment (EA) and issued a Finding of No Significant Impact (FONSI) relating to the consolidation and regionalization of its 16 Defense Megacenters (DMCs) and related facilities in response to recommended action from the Quadrennial Defense Review (QDR). This action will result in reduced costs to the Department of Defense (DOD) and improved operational efficiencies without compromising service quality. This notice announces the availability of the final EA and FONSI to concerned agencies and the public.

**ADDRESSES:** Requests to receive a copy of the EA or FONSI should be mailed to Defense Information Systems Agency, Public Affairs Officer, 701 S. Courthouse Rd., Arlington, VA 22204–2199. The documents may also be picked up at the same address between the hours of 9 AM and 4 PM EST, Monday through Friday, except Federal holidays, by contacting Ms. Betsy Flood at (703) 607–6048/6900. Arrangements must be made in advance to pick up the documents, due to facility security requirements.

**FOR FURTHER INFORMATION CONTACT:** Ms. Betsy Flood, Public Affairs Officer, at (703) 607–6048/6900.

**SUPPLEMENTARY INFORMATION:**

#### Background

The Defense Information Systems Agency (DISA) is a Department of Defense (DOD) combat support agency under the direction, authority and control of the Assistant Secretary of Defense for Command, Control, Communications, and Intelligence (ASD[C31]). One of DISA's mission functions is to provide information processing support to the DOD, services, and agencies. In response to the QDR and continuing pressure to reduce federal spending, DISA has developed a proposal to consolidate and restructure operations and reduce operating costs. As input in the decision process of whether or not to implement this proposal, an EA has been prepared, as required by the National Environmental Policy Act (NEPA). The following provides a summary of the proposal, the results of the EA and conclusions.

#### Proposed Action

The Proposed Action consists of the following:

a. Consolidate mainframe processing from 16 existing Defense Megacenters (DMCs) into six facilities, five plus one Unisys legacy processing site,

b. Establish self-sustaining, regional support centers at each of the existing DMC sites with the exception of Sacramento, which is being closed as part of a Base Closure & Realignment (BRAC) 1995 action,

c. Establish self-sustaining, regional support centers at four of the remaining CONUS Storefront locations, closing others that are not transferred back to the Services through other initiatives, and

d. Reduce overhead staffing and allow for consolidation of overhead support functions.

These initiatives will hereafter be synonymous with the term Proposed Action.

#### Purpose and Need

With implementation of the Proposed action, DISA intends to:

a. Implement the Quadrennial Defense Review (QDR) recommendation,

b. Reduce costs to DOD by improving operational efficiency, while still providing equivalent or better service,

c. Consolidate mainframe processing into six standardized processing sites, located at existing DISA occupied facilities, through a transparent workload migration process,

d. Reorganize and reduce the management infrastructure needed to manage computer operations under the Defense Working Capital Fund, and

e. Realize savings from more efficient operations already reflected in FY98 and outyear budgets and most recent Program Objective Memorandum (POM) submission.

#### Result of Action

Under the proposed action, mainframe processing will be performed at the following six sites: DMC Columbus, OH; DMC Mechanicsburg, PA; DMC Ogden, UT; Oklahoma City, OK; DMC St. Louis, MO and DMC San Antonio, TX (Unisys legacy processing site).

The above sites and 13 additional sites would serve as regional sites, with the requirements that workload fully supports the costs to operate each site. The 13 additional sites are the following: Bremertgon, WA; Chambersburg, PA; Charleston, SC; Dayton, OH; Denver, CO; Huntsville, AL; Indianapolis, IN; Jacksonville, FL; Montgomery, AL; Norfork, VA; Rock Island, IL; San Diego, CA and Warner Robins, GA

#### Alternatives to the Proposed Action

Two alternatives to the proposed action were assessed in this study: The Outsourcing Alternative and the No-Action Alternative.

The outsourcing Alternative is based upon the Coopers & Lybrand study titled 'Strategy Options for Defense Information Services' (February 1996) which represents a potential industry response to outsourcing the mainframe processing workload of the 16 DMCs. This alternative assumes that all DMC technical support and computer operations functions would be contracted to a single commercial firm. Each of the 16 DMCs would be contracted out in order to allow the contractor to consolidate to six sites and achieve efficiencies. The ten remaining sites would be closed.

The No-Action Alternative is considered to be continuation of current

DISA management of all existing DMCs, storefronts and other associated facilities. This alternative includes the completion of optimization and BRAC initiatives that are currently underway as well as actions that are within the purview of DISA management, such as contract consolidation and software standardization.

**Summary of Environmental Impacts**

The Proposed Action is unlikely to have significant impacts on the environment, because DISA activities associated with each site generally occur indoors in computer, data processing or office surroundings. The operations have little, if any, interaction with the human or natural environment. Analyses of potential economic impacts demonstrated no meaningful change to the economic areas surrounding each of the sites from the increase or decrease in DISA employment.

**Findings and Conclusions**

The analyses conducted for this EA support the determination that there are no direct or indirect environmental impacts which should preclude DISA from implementing the Proposed Action. The potential for impacts resulting from DISA employment loss or gain is negligible in each of the economic areas associated with this action. Therefore, no mitigation is required or planned for the Proposed Action. Based on the EA, a Finding of No Significant Impact (FONSI) is issued. Preparation of an Environmental Impact Statement is not required for the Proposed Action. This FONSI and the supporting EA fulfill the requirements of NEPA, DOD directive 6050.1, and the Council on Environmental Quality regulation implementing NEPA.

**Beverly Sampson,**

*Chief Protocol Officer.*

[FR Doc. 97–32308 Filed 12–9–97; 8:45 am]

**BILLING CODE 5000–03–M**

## DELAWARE RIVER BASIN COMMISSION

### Notice of Commission Meeting and Public Hearing

Notice is hereby given that the Delaware River Basin Commission will hold a public hearing on Wednesday, December 17, 1997. The hearing will be part of the Commission's regular business meeting which is open to the public and scheduled to begin at 1:30 p.m. in the Goddard Conference Room of the Commission's offices at 25 State Police Drive, West Trenton, New Jersey.

An informal conference among the Commissioners and staff will be held at 11:00 a.m. at the same location and will include discussion of proposed amendments to the Commission's Ground Water Protected Area Regulations for Southeastern Pennsylvania and response document distribution and the 1998 Commission meeting schedule.

In addition to the subjects listed which are scheduled for public hearing at the business meeting, the Commission will also address the following: Minutes of the November 19, 1997 business meeting; announcements; General Counsel's Report; report on Basin hydrologic conditions; a resolution to adopt the current expense and capital budgets for Fiscal Year 1999; a resolution to adopt a Commission vision and mission statement entitled Charting the Future and public dialogue.

The subjects of the hearing will be as follows:

**Applications for Approval of the Following Projects Pursuant to Article 10.3, Article 11 and/or Section 3.8 of the Compact**

*1. Mount Holly Water Company D–95–46 CP*

An application for approval of a ground water withdrawal project to supply up to 88.7 million gallons (mg)/30 days of water to the applicant's Mansfield Water Supply Facility from new Well Nos. 1, 2, 3 and 4, and to limit the withdrawal from all Mansfield and Mount Holly water systems wells to 184 mg/30 days. The project is located in Mansfield Township, Burlington County, New Jersey.

*2. New Jersey Turnpike Authority D–96–55 CP*

An application for approval of a ground water withdrawal project to supply up to 3.6 mg/30 days of water to the applicant's Service Area 1N from new Well No. 1N–3, and to limit the existing withdrawal from all wells to 3.6 mg/30 days. The project is located in Oldmans Township, Salem County, New Jersey.

*3. Perkasie Borough Authority D–97–12 CP*

An application for approval of a ground water withdrawal project to supply up to 21.6 mg/30 days of water to the applicant's distribution system from new Well No. 12, and to retain the existing withdrawal limit from all wells of 34.2 mg/30 days. The project is located in East Rockhill Township and Perkasie Borough, Bucks County, in the Southeastern Pennsylvania Ground Water Protected Area.

*4. Horsham Water Authority D–97–16 CP*

An application for approval of a ground water withdrawal project to supply up to 14.4 mg/30 days of water to the applicant's distribution system from new Well No. 40, and to retain the existing withdrawal limit from all wells of 83.36 mg/30 days. The project is located in Horsham Township, Montgomery County, in the Southeastern Pennsylvania Ground Water Protected Area.

*5. Milford Township Water Authority D–97–24 CP*

An application for approval of a ground water withdrawal project to supply up to 3.46 mg/30 days of water to the applicant's distribution system from new Well No. 2, and to increase the existing withdrawal limit from all wells from 5.58 mg/30 days to 9.04 mg/30 days. The project is located in Milford Township, Bucks County, in the Southeastern Pennsylvania Ground Water Protected Area.

*6. Superior Water Company D–97–26 CP*

An application to replace the withdrawal of ground water from Well No. 3 in the applicant's water supply system which has become an unreliable source of supply. The applicant requests that the withdrawal from replacement Well No. 10 be limited to 3.88 mg/30 days, and that the total withdrawal from all wells remain limited to 15 mg/30 days. The project is located in Douglass and New Hanover Townships, Montgomery County, in the Southeastern Pennsylvania Ground Water Protected Area.

*7. Borough of Delaware Water Gap D–97–32 CP*

An application for approval of a ground water withdrawal project to supply up to 9.15 mg/30 days of water to the applicant's distribution system from new Well Nos. 6 and 7, and to limit the withdrawal from all wells to 15 mg/30 days. The project is located in Delaware Water Gap Borough, Monroe County, Pennsylvania.

*8. Borough of Quakertown D–97–36 CP*

An application to replace the withdrawal of water from Well No. 15 in the applicant's water supply system which has become an unreliable source of supply, with new Well No. 15A. The applicant requests that the total withdrawal from all wells remain limited to 51.1 mg/30 days. The project is located in the Borough of

Quakertown, Bucks County, in the Southeastern Pennsylvania Ground Water Protected Area.

*9. Moyer Packing Company D–97–44*

An application for approval of a ground water withdrawal project to supply up to 3.0 mg/30 days of water to the applicant's beef processing facility from new Well Nos. 7 and 8, and to increase the existing withdrawal limit from all wells from 6.4 mg/30 days to 11.5 mg/30 days. The project is located in Franconia Township, Montgomery County, in the Southeastern Pennsylvania Ground Water Protected Area.

Documents relating to these items may be examined at the Commission's offices. Preliminary dockets are available in single copies upon request. Please contact Thomas L. Brand at (609) 883–9500 ext. 221 concerning docket-related questions. Persons wishing to testify at this hearing are requested to register with the Secretary at (609) 883–9500 ext. 203 prior to the hearing.

Dated: December 2, 1997.

**Susan M. Weisman,**

*Secretary.*

[FR Doc. 97–32319 Filed 12–9–97; 8:45 am]

BILLING CODE 6360–01–P

## DEPARTMENT OF EDUCATION

### Notice of Proposed Information Collection Requests

**AGENCY:** Department of Education.

**ACTION:** Proposed collection; comment request.

**SUMMARY:** The Deputy Chief Information Officer, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

**DATES:** Interested persons are invited to submit comments on or before February 9, 1998.

**ADDRESSES:** Written comments and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

**FOR FURTHER INFORMATION CONTACT:** Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any angency's ability to perform its statutory obligations. The Deputy Chief Information Officer, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department, (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate, (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: December 4, 1997.

**Gloria Parker,**

*Deputy Chief Information Officer, Office of the Chief Information Officer.*

### Office of Educational Research and Improvement

*Type of Review:* Reinstatement.

*Title:* Field Test New Assessment Items for Third International Mathematics and Sciences Study Replication (TIMSS–R).

*Frequency:* Field test for new assessment items.

*Affected Public:* Individuals or households; Not-for-profit institutions.

*Reporting Burden and Recordkeeping:* Responses: 625. Burden Hours: 1,563.

*Abstract:* In order to provide international benchmarks against which to measure the mathematics performance of American students as part of the President's new voluntary test, and the measure progress toward the U.S. national goal of being first in the world in mathematics and science in the year 2000, the National Center for Education Statistics desires to repeat TIMSS in the U.S. in 1999.

### Office of the Under Secretary

*Type of Review:* New.

*Title:* Institutional Survey of the Operation of the Federal Work-Study Program.

*Frequency:* One time.

*Affected Public:* Business or other for-profit; Not-for-profit institutions.

*Reporting and Recordkeeping Hour Burden:* Responses: 850 Burden Hours: 1,700.

*Abstract:* This study will describe the operation of the Federal Work-Study program at postsecondary education institutions nationwide. This survey will provide, for the first time, nationally-representative data on the workings of this program. Results will be used by Congress during the reauthorization of the Higher Education Act and for other oversight responsibilities.

[FR Doc. 97–32232 Filed 12–9–97; 8:45 am]

BILLING CODE 4000–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[FERC–555]**

### Proposed Information Collection and Request for Comments

December 4, 1997.

**AGENCY:** Federal Energy Regulatory Commission, DOE.

**ACTION:** Notice of proposed information collection and request for comments.

**SUMMARY:** In compliance with the requirements of Section 3506(c)(2)(a) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13), the Federal Energy Regulatory Commission (Commission) is soliciting public comment on the specific aspects of the information collection described below.

**DATES:** Consideration will be given to comments submitted on or before February 9, 1998.

**ADDRESSES:** Copies of the proposed records retention requirements can be obtained from and written comments may be submitted to the Federal Energy

Regulatory Commission, Attn: Michael P. Miller, Information Services Division, ED–12.4, 888 First Street N.E., Washington, D.C. 20426.

**FOR FURTHER INFORMATION CONTACT:** Michael Miller may be reached by telephone at (202) 208–1415, by fax at (202) 273–0873, and by e-mail at mmiller@ferc.fed.us.

**SUPPLEMENTARY INFORMATION:** The information retained under the requirements of FERC–555 ''Records Retention Requirements'' (OMB No. 1902–0098) is used by the Commission to implement the statutory provisions of Sections 301, 304, and 309 of the Federal Power Act (FPA) 16 U.S.C. 792.828c, Sections 8, 10 and 16 of the Natural Gas Act (NGA), 15 U.S.C. 717–717w, and Section 20 of the Interstate Commerce Act (ICA), 49 U.S.C. 20.

The regulations for preservation of records establish retention periods, necessary guidelines and requirements to sustain retention of applicable records for the regulated public utilities, natural gas and oil pipeline companies subject to the jurisdiction of the FERC. These records will be used by the regulated companies as the basis for their required rate filings and reports for the Commission. In addition, the records will be used by the Commission's audit staffs during the scheduled periodic compliance reviews and special analyses performed as deemed necessary by the Commission. The records retained by the jurisdictional entities as directed by the Commission are the result of a mandatory requirement. The Commission implements these filing requirements in the Code of Federal Regulations (CFR) under 18 CFR parts 125, 225 and 356.

*Action:* The Commission is requesting a three-year extension of the current expiration date, with no changes to the existing collection of data.

*Burden Statement:* Public recordkeeping burden for this collection is estimated as:

| No. of respondents annually—(1) | No. of responses per respondent—(2) | Average burden hours per response—(3) | Total annual burden hours—(1)×(2)×(3) |
|---|---|---|---|
| 500 | 1 | 2,400 hours | 1,200,000 hours. |

*Estimated cost burden to respondents:* 1,200,000 hours/2,087 hours per year × $110,000 per year = $63,248,682. The cost per respondent is equal to $126,497.

The recordkeeping burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose, or provide the information including: (1) reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information.

The estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to maintaining records, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than any one particular function or activity.

Comments are invited on: (1) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology *e.g.* permitting electronic submission of responses.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 97–32234 Filed 12–9–97; 8:45 am]

**BILLING CODE 6717–01–M**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP98–81–000]**

## ANR Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

December 4, 1997.

Take notice that on December 1, 1997, ANR Pipeline Company (ANR) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets to be effective January 1, 1998:

First Revised Sheet No. 128A

First Revised Sheet No. 129

ANR submits that the purpose of this filing is to propose a modification to its General Terms and Conditions to modify the upper BTU limit contained in the Heat Content provision to provide for a maximum BTU for receipts upstream of gas processing of 1200 BTU's per cubic foot, or 1050 BTU's per cubic foot for gas receipts that either cannot or are not being processed. ANR further states that it will continue to accept gas outside its stated BTU tariff limits if, in its reasonable opinion, it will not affect its operations.

ANR states that copies of the filing have been mailed to all affected customers and state regulatory commissions.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public

inspection in the Public Reference Room.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 97–32240 Filed 12–9–97; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. TM98–3–32–000]**

## Colorado Interstate Gas Company; Notice of Tariff Filing

December 4, 1997.

Take notice that, on December 1, 1997, Colorado Interstate Gas Company (CIG) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Sixth Revised Sheet No. 11A reflecting an increase in its fuel reimbursement percentage for Lost, Unaccounted-For and Other Fuel Gas from 0.69% to 0.73% effective January 1, 1998.

CIG states that copies of this filing have been served on CIG's jurisdictional customers and public bodies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR Sections 385.214 and 385.211). All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 97–32241 Filed 12–9–97; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. MT98–1–001]**

## Mid Louisiana Gas Company; Notice of Proposed Changes in FERC Gas Tariff

December 4, 1997.

Take notice that on November 12, 1997, Mid Louisiana Gas Company (Mid Louisiana) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff, with an effective date of November 1, 1997:

Sixth Revised Sheet No. 131

Mid Louisiana states that the purpose of the filing of the Revised Tariff Sheet is to comply with Commission letter order dated November 6, 1997 in docket number MT98–1–000 (81 FERC, ¶ 62,124) in which the Commission instructed Mid Louisiana to re-file the referenced sheet with a corrected superseded sheet number.

Pursuant to section 154.7(a)(7) of the Commission's Regulations, Mid Louisiana respectfully requests waiver of any requirement of the Regulations in order to permit the tendered tariff sheet to become effective November 1, 1997, as submitted.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests should be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this compliance filing are on file with the Commission and are available for public inspection in the Public Reference Room.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 97–32236 Filed 12–9–97; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP98–80–000]**

## National Fuel Gas Supply Corporation; Notice of Proposed Changes in FERC Gas Tariff

December 4, 1997.

Take notice that on December 1, 1997, National Fuel Gas Supply Corporation (National) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, Third Revised Sheet No. 8, with a proposed effective date of January 1, 1998.

National states that the proposed tariff sheets reflect an adjustment to recover through National's EFT rate the costs associated with the Transportation and Storage Cost Adjustment provision set forth in section 23 of the General Terms and Conditions of National's FERC Gas Tariff.

National further states that copies of this compliance filing were served upon the company's jurisdictional customers and the regulatory commissions of the States of New York, Ohio, Pennsylvania, Delaware, Massachusetts, and New Jersey.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with section 385.211 or 385.214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 97–32239 Filed 12–9–97; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. TM98–4–16–000]**

## National Fuel Gas Supply Corporation; Notice of Tariff Filing

December 4, 1997.

Take notice that on December 1, 1997, National Fuel Gas Supply Corporation (National) tendered for filing as part of its FERC Gas Tariff, Fourth revised Volume No. 1, Fifth Revised Revised Sheet No. 9. with a proposed effective date of December 1, 1997.

National states that pursuant to Article II, Section 2, of the approved settlement at Docket Nos. RP94–367–000, et al., National is required to recalculate the maximum Interruptible Gathering (IG) rate monthly and to charge that rate on the first day of the following month if the result is an IG rate more than 2 cents above or below the IG rate as calculated under Section 1 of Article II. The recalculation produced an IG rate of 13.0 cents per dth.

National further states that, as required by Article II. Section 4, National is filing a revised tariff sheet within 30 days of the effective date for the revised IG rate.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., 20426, in accordance with rules 211 or 214 of the Commission's Rules or Practice and Procedure (18 CFR Sections 385.211 or 385.214). All such motions or protests must be filed Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 97–32242 Filed 12–9–97; 8:45 am]

**BILLING CODE 6717–01–M**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. TM98–5–16–000]**

## National Fuel Gas Supply Corporation; Notice of Tariff Filing

December 4, 1997.

Take notice that on December 1, 1997, National Fuel Gas Supply Corporation (National) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, Sixth Revised Sheet No. 9 and First Revised Sheet No. 43 to its FERC Gas Tariff, Fourth Revised Volume No. 1, with a proposed effective date of January 1, 1998.

National states that pursuant to Article III, Section 1, of the approved settlement at Docket Nos. RP94–367–000, et al., National is required to recalculate the maximum Firm Gathering (FG) rate annually to reflect: (a) the changes in the FG reservation determinants based on the FG throughput for the prior 12 months ended October 31; (b) an annual reduction of 2.5 percent in direct Operation and Maintenance Costs; (c) the costs resulting from operation of Section 2 and 3 of Article III of the settlement; and (d) changes in the IG revenues to be subtracted from the Gathering Cost-of Service based on the maximum IG rate in effect each month during the prior 12 months ended October 31 times the IG throughput for that same period. The recalculation produced and FG rate of $7.1506 per dth.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR Sections 385.211 or 385.214). All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 97–32243 Filed 12–9–97; 8:45 am]

**BILLING CODE 6717–01–M**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket Nos. RP95–326–012 and RP95–242–011]**

## Natural Gas Pipeline Company of America; Notice of Proposed Changes In FERC Gas Tariff

December 4, 1997.

Take notice that on November 18, 1997, Natural Gas Pipeline Company of America (Natural) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1 and Second Revised Volume No. 2, certain tariff sheets to be effective December 1, 1997.

Natural states that the purpose of the filing is to implement provisions of the Stipulation and Agreement (Settlement) filed by Natural in Docket Nos. RP95–326–010 and RP95–242–010 on May 31, 1996. The Settlement represents a comprehensive resolution of Natural's pending general rate case, which was approved by the Commission in a letter order issued on November 3, 1997 in said dockets.

Natural request any waivers which may be required to permit the tendered tariff sheets to become effective on December 1, 1997.

Natural states that copies of the filing have been mailed to Natural's customers, interested state regulatory agencies, and all parties set out on the official service list in Docket Nos. RP95–326 and RP95–242.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before December 11, 1997. Protests will be considered by the Commission in determing the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this compliance filing are on file with the Commission and are available for public inspection in the Public Reference Room.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 97–32237 Filed 12–9–97; 8:45 am]

**BILLING CODE 6717–01–M**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP98–79–000]**

### Tennessee Gas Pipeline Company; Notice of Tariff Filling

December 4, 1997.

Take notice that on December 1, 1997, Tennessee Gas Pipeline Company (Tennessee) tendered for filing as part of its FERC Gas Tariff, the following revised sheets, with an effective date of January 1, 1998:

Fifth Revised Sheet No. 38
Fourth Revised Sheet No. 39
Fourth Revised Sheet No. 40
Fourth Revised Sheet No. 41
Fourth Revised Sheet No. 42
First Revised Sheet No. 43
First Revised Sheet No. 44
First Revised Sheet No. 45

Tennessee states that these tariff sheets set forth revisions to Tennessee's tariff provisions concerning collection of Tennessee's take-or-pay transition costs through fixed charges. Tennessee states that the amount filed to be collected under the foregoing tariff sheet is $2,530,367, which includes $439,462 of market area volumetric costs proposed to be collected through fixed charges.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 24026, in accordance with 18 CFR sections 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to this proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and available for public inspection in the Public Reference Room.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 97–32238 Filed 12–9–97; 8:45 am]

**BILLING CODE 6717–01–M**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. EG98–11–000, et al.]**

### Magellan Utilities Development Corp., et al.; Electric Rate and Corporate Regulation Filings

December 3, 1997.

Take notice that the following filings have been made with the Commission:

#### 1. Magellan Utilities Development Corporation

[Docket No. EG98–11–000]

Take notice that on November 26, 1997, Magellan Utilities Development Corporation (Magellan) of 4/F Ortigas Building, Ortigas Avenue, Pasig City, Philippines, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

Applicant asserts that it is a corporation organized under Philippine law which was formed to develop and own a 300 megawatt pulverized coal-fired power plant to be located south of Manila, the Philippines (the Facility), which will be an eligible facility as defined in the Public Utility Holding Company Act of 1935. All of the electric energy produced by the Facility will be sold at wholesale to Manila Electric Company, a Philippine utility, or to other utilities located in the Philippines.

*Comment date:* December 22, 1997, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

#### 2. PECO Energy Company

[Docket No. ER98–641–000]

Take notice that on November 13, 1997, PECO Energy Company (PECO), filed an executed Installed Capacity Obligation Allocation Agreement between PECO and Strategic Energy Partners Ltd., (hereinafter Supplier). The terms and conditions contained within this Agreement are identical to the terms and conditions contained with the Form of Installed Capacity Allocation Agreement filed by PECO with the Commission on October 3, 1997, at Docket No. ER98–28–000. This filing merely submits an individual executed copy of the Installed Capacity Obligation Allocation Agreement between PECO and an alternate supplier participating in PECO's Pilot.

Copies of the filing were served on the Supplier and the Pennsylvania Public Utility Commission.

*Comment date:* December 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

#### 3. PECO Energy Company

[Docket No. ER98–642–000]

Take notice that on November 13, 1997, PECO Energy Company (PECO), filed an executed Transmission Agency Agreement between PECO and Strategic Energy Partners Ltd. (hereinafter Supplier). The terms and conditions contained within this Agreement are identical to the terms and conditions contained with the Form of Transmission Agency Agreement submitted to the Commission on October 3, 1997, as part of the joint filing by the Pennsylvania Public Utility Commission and the Pennsylvania PJM Utilities at Docket No. ER98–64–000. This filing merely submits an individual executed copy of the Transmission Agency Agreement between PECO and an alternative supplier participating in PECO's Retail Access Pilot Program.

Copies of the filing were served on the Supplier and the Pennsylvania Public Utility Commission.

*Comment date:* December 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

#### 4. PECO Energy Company

[Docket No. ER98–643–000]

Take notice that on November 13, 1997, PECO Energy Company (PECO), filed an executed Installed Capacity Obligation Allocation Agreement between PECO and MidCon Gas Services Corp., (hereinafter Supplier). The terms and conditions contained within this Agreement are identical to the terms and conditions contained with the Form of Installed Capacity Allocation Agreement filed by PECO with the Commission on October 3, 1997, at Docket No. ER98–28–000. This filing merely submits an individual executed copy of the Installed Capacity Obligation Allocation Agreement between PECO and an alternate supplier participating in PECO's Pilot.

Copies of the filing were served on the Supplier and the Pennsylvania Public Utility Commission.

*Comment date:* December 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

#### 5. PECO Energy Company

[Docket No. ER98–644–000]

Take notice that on November 13, 1997, PECO Energy Company (PECO), filed an executed Installed Capacity

Obligation Allocation Agreement between PECO and CNG Retail Services Corp., (hereinafter Supplier). The terms and conditions contained within this Agreement are identical to the terms and conditions contained with the Form of Installed Capacity Allocation Agreement filed by PECO with the Commission on October 3, 1997 at Docket No. ER98–28–000. This filing merely submits an individual executed copy of the Installed Capacity Obligation Allocation Agreement between PECO and an alternate supplier participating in PECO's Pilot.

Copies of the filing were served on the Supplier and the Pennsylvania Public Utility Commission.

*Comment date:* December 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

**6. PECO Energy Company**

[Docket No. ER98–645–000]

Take notice that on November 13, 1997, PECO Energy Company (PECO), filed an executed Transmission Agency Agreement between PECO and MidCon Gas Services Corp., (hereinafter Supplier). The terms and conditions contained within this Agreement are identical to the terms and conditions contained with the Form of Transmission Agency Agreement submitted to the Commission on October 3, 1997 as part of the joint filing by the Pennsylvania Public Utility Commission and the Pennsylvania PJM Utilities at Docket No. ER98–64–000. This filing merely submits an individual executed copy of the Transmission Agency Agreement between PECO and an alternative supplier participating in PECO's Retail Access Pilot Program.

Copies of the filing were served on the Supplier and the Pennsylvania Public Utility Commission.

*Comment date:* December 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

**7. Wisconsin Public Service Corporation**

[Docket No. ER98–646–000]

Take notice that on November 13, 1997, Wisconsin Public Service Corporation, tendered for filing an executed service agreement with Williams Energy Services Co., under its CS–1 Coordination Sales Tariff.

*Comment date*: December 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

**8. PP&L, Inc.**

[Docket No. ER98–647–000]

Take Notice that on November 13, 1997, PP&L, Inc. (formerly known as Pennsylvania Power & Light Company) (PP&L), filed a Service Agreement dated October 27, 1997, with Dayton Power and Light Company (DP&L) under PP&L's FERC Electric Tariff, Original Volume No. 5. The Service Agreement adds DP&L as an eligible customer under the Tariff.

PP&L requests an effective date of November 13, 1997, for the Service Agreement.

PP&L states that copies of this filing have been supplied to DP&L and to the Pennsylvania Public Utility Commission.

*Comment date:* December 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

**9. Central Illinois Light Company**

[Docket No. ER98–648–000]

Take notice that on November 13, 1997, Central Illinois Light Company (CILCO), 300 Liberty Street, Peoria, Illinois 61202, tendered for filing with the Commission a substitute Index of Customers under its Coordination Sales Tariff and two service agreements for two new customers, PacificCorp Power Marketing, Inc., and American Electric Power System.

CILCO requested an effective date of November 7, 1997.

Copies of the filing were served on the affected customers and the Illinois Commerce Commission.

*Comment date:* December 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

**10. Additional Signatories to PJM Interconnection, L.L.C. Operating Agreement**

[Docket No. ER98–649–000]

Take notice that on November 13, 1997, the PJM Interconnection, L.L.C., (PJM), filed on behalf of the Members of the LLC, membership applications of Bruin Energy, Inc., and PG&E Energy Services Corporation. PJM requests an effective date on the day after received by FERC.

*Comment date*: December 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

11. Arizona Public Service Company

[Docket No. ER98–650–000]

Take notice that on November 13, 1997, Arizona Public Service Company (APS), tendered for filing Umbrella Service Agreements to provide Firm and Non-Firm Point-to-Point Transmission Service under APS' Open Access Transmission Tariff with NP Energy Inc.

A copy of this filing has been served on NP Energy Inc., and the Arizona Corporation Commission.

*Comment date:* December 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

12. Carolina Power & Light Company

[Docket No. ER98–651–000]

Take notice that on November 13, 1997, Carolina Power & Light Company (CP&L), tendered for filing a rate schedule enabling CP&L to make wholesale sales of capacity and energy at market-based rates. CP&L requests an effective date sixty days from the date of filing.

*Comment date:* December 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

13. Puget Sound Energy, Inc.

[Docket No. ER98–652–000]

Take notice that on November 13, 1997, Puget Sound Energy, Inc., as Transmission Provider, tendered for filing a Service Agreement for Firm Point-to-Point Transmission Service (Firm Point-to-Point Service Agreement) and a Service Agreement for Non-Firm Point-to-Point Transmission Service (Non-Firm Point-to-Point Service Agreement) with Aquila Power Corporation (Aquila), as Transmission Customer. A copy of the filing was served upon Aquila.

*Comment date:* December 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

14. Puget Sound Energy, Inc.

[Docket No. ER98–653–000]

Take notice that on November 13, 1997, Puget Sound Energy, Inc., as Transmission Provider, tendered for filing a Service Agreement for Firm Point-to-Point Transmission Service (Firm Point-to-Point Service Agreement) and a Service Agreement for Non-Firm Point-to-Point Transmission Service (Non-Firm Point-to-Point Service Agreement) with Cook Inlet Energy Supply, LP (CIES), as Transmission Customer. A copy of the filing was served upon CIES.

*Comment date:* December 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

15. Puget Sound Energy, Inc.

[Docket No. ER98–654–000]

Take notice that on November 13, 1997, Puget Sound Energy, Inc., as Transmission Provider, tendered for filing a Service Agreement for Firm Point-to-Point Transmission Service (Firm Point-to-Point Service Agreement) and a Service Agreement for Non-Firm Point-to-Point Transmission Service (Non-Firm Point-to-Point Service Agreement) with Cinergy Services, Inc. (Cinergy), as Transmission Customer. A copy of the filing was served upon Cinergy.

*Comment date:* December 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

16. Puget Sound Energy, Inc.

[Docket No. ER98–655–000]

Take notice that on November 13, 1997, Puget Sound Energy, Inc., as Transmission Provider, tendered for filing a Service Agreement for Firm Point-to-Point Transmission Service (Firm Point-to-Point Service Agreement) and a Service Agreement for Non-Firm Point-to-Point Transmission Service (Non-Firm Point-to-Point Service Agreement) with Delhi Energy Services, Inc. (Delhi), as Transmission Customer. A copy of the filing was served upon Delhi.

*Comment date:* December 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

17. Puget Sound Energy, Inc.

[Docket No. ER98–656–000]

Take notice that on November 13, 1997, Puget Sound Energy, Inc., as Transmission Provider, tendered for filing a Service Agreement for Firm Point-to-Point Transmission Service (Firm Point-to-Point Service Agreement) and a Service Agreement for Non-Firm Point-to-Point Transmission Service (Non-Firm Point-to-Point Service Agreement) with Vitol Gas & Electric LLC (VG&E), as Transmission Customer. A copy of the filing was served upon VG&E.

*Comment date:* December 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

18. Puget Sound Energy, Inc.

[Docket No. ER98–657–000]

Take notice that on November 13, 1997, Puget Sound Energy, Inc., as Transmission Provider, tendered for filing a Service Agreement for Firm Point-to-Point Transmission Service (Firm Point-to-Point Service Agreement) and a Service Agreement for Non-Firm Point-to-Point Transmission Service (Non-Firm Point-to-Point Service Agreement) with Western Resources, Inc. (Western), as Transmission Customer. A copy of the filing was served upon Western.

*Comment date:* December 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

**19. Puget Sound Energy, Inc.**

[Docket No. ER98–658–000]

Take notice that on November 13, 1997, Puget Sound Energy, Inc., as Transmission Provider, tendered for filing a Service Agreement for Firm Point-to-Point Transmission Service (Firm Point-to-Point Service Agreement) and a Service Agreement for Non-Firm Point-to-Point Transmission Service (Non-Firm Point-to-Point Service Agreement) with Williams Energy Services Company (Williams), as Transmission Customer. A copy of the filing was served upon Williams.

*Comment date:* December 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

**20. Puget Sound Energy, Inc.**

[Docket No. ER98–659–000]

Take notice that on November 13, 1997, Puget Sound Energy, Inc., as Transmission Provider, tendered for filing a Service Agreement for Firm Point-to-Point Transmission Service (Firm Point-to-Point Service Agreement) and a Service Agreement for Non-Firm Point-to-Point Transmission Service (Non-Firm Point-to-Point Service Agreement) with Edison Source (Edison), as Transmission Customer. A copy of the filing was served upon Edison.

*Comment date:* December 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

**21. Puget Sound Energy, Inc.**

[Docket No. ER98–660–000]

Take notice that on November 13, 1997, Puget Sound Energy, Inc., as Transmission Provider, tendered for filing a Service Agreement for Firm Point-to-Point Transmission Service (Firm Point-to-Point Service Agreement) and a Service Agreement for Non-Firm Point-to-Point Transmission Service (Non-Firm Point-to-Point Service Agreement) with Public Utility District No. 1 of Chelan County (Chelan), as Transmission Customer. A copy of the filing was served upon Chelan.

*Comment date:* December 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

**22. Puget Sound Energy, Inc.**

[Docket No. ER98–661–000]

Take notice that on November 13, 1997, Puget Sound Energy, Inc., as Transmission Provider, tendered for filing a Service Agreement for Firm Point-to-Point Transmission Service (Firm Point-to-Point Service Agreement) and a Service Agreement for Non-Firm Point-to-Point Transmission Service (Non-Firm Point-to-Point Service Agreement) with TransAlta Energy Marketing Corporation (TransAlta), as Transmission Customer. A copy of the filing was served upon TransAlta.

*Comment date:* December 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

**Standard Paragraph**

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 97–32323 Filed 12–9–97; 8:45 am]

BILLING CODE 6717–01–P

## ENVIRONMENTAL PROTECTION AGENCY

**[PF–770; FRL–5749–3]**

### Notice of Filing of a Pesticide Petition

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of certain pesticide chemicals in or on various food commodities.

**DATES:** Comments, identified by the docket control number PF–770, must be received on or before January 9, 1998.

**ADDRESSES:** By mail submit written comments to: Public Information and Records Integrity Branch (7502C), Information Resources and Services Division, Office of Pesticides Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically to: opp-docket@epamail.epa.gov. Follow the instructions under ''SUPPLEMENTARY INFORMATION.'' No confidential business information should be submitted through e-mail.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as ''Confidential Business Information''

(CBI). CBI should not be submitted through e-mail. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

**FOR FURTHER INFORMATION CONTACT:** By mail: Sheila A. Moats, Regulatory Action Leader, Biopesticides and Pollution Prevention Division (7511W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460. Office location and telephone number: 5th floor CS #1, 2800 Crystal Drive, Arlington, VA 22202, (703) 308–1259; e-mail: moats.sheila@epamail.epa.gov.

**SUPPLEMENTARY INFORMATION:** EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemicals in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

The official record for this notice of filing, as well as the public version, has been established for this notice of filing under docket control number [PF–770] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official record is located at the address in ''ADDRESSES'' at the beginning of this document.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in Wordperfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket control number [PF–770] and appropriate petition number. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

**List of Subjects**

Environmental protection, Agricultural commodities, Food additives, Feed additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: November 26, 1997.

**Janet L. Andersen,**

*Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.*

**Summary of the Petition**

Petitioner summary of the pesticide petition is printed below as required by section 408(d)(3) of the FFDCA. The summary of the petition was prepared by the petitioner and represents the view of the petitioner. EPA is publishing the petition summary verbatim without editing it in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

**J P BioRegulators Inc.**

*PP 7G4892*

EPA has received a pesticide petition (7G4892) from J P BioRegulators Inc, 1611 Maple St., Middleton, Wisconsin 53562, proposing pursuant to section 408(d) of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 346a, to amend 40 CFR part 180 by establishing an exemption from the requirement of a tolerance for residues of phospholipid in or on grapes, tomatoes, apples, pear, peaches, nectarines, citrus, cranberries, and strawberries. Pursuant to section 408(d)(2)(A)(I) of the FFDCA, as amended, J P BioRegulators Inc., has submitted the following summary of information, data, and arguments in support of their pesticide petition. This summary was prepared by J P BioRegulators Inc., and EPA has not fully evaluated the merits of the petition. The summary may have been edited by EPA if the terminology used was unclear, the summary contained extraneous material, or the summary was not clear that is reflected the conclusion of the petitioner and not necessarily EPA.

*A. Proposed Use Practices*

An experimental use permit and temporary tolerance for phospholipid is being proposed for the following sites: grapes, tomatoes, apples, pear, peaches, nectarines, citrus, cranberries and strawberries in Arizona, California, Florida, Massachusetts, Michigan, Ohio, Washington, West Virginia and Wisconsin on a total of 570 acres/year for a 3 year period.

Phospholipid is used to enhance the ripening and shelf life of fruits. Phospholipid enhances ethylene production thus stimulating and promoting ripening, but does not enhance respiration so that fruit stays firmer and has a longer shelf life.

Phospholipid is sprayed at the rate of 100-500 ppm Lyso PE (lysophosphatidylethanolamine, a specific type of phospholipid) mixed in water. Application rate will be 50-200 gallons per acre. Preharvest applications are made May through October and post harvest application is extended into December. Treatment is made either 2 weeks prior to harvest or within 1-4 weeks after harvest.

*B. Product Identity/Chemistry*

The active ingredient is phospholipid (Lyso PE). The mechanism by which phospholipid enhances ripening is as a growth regulator. It has been observed empirically that phospholipid stimulates ethylene production, but not respiration of plant tissues although the exact mechanism is not fully understood. Phospholipid is present in all cells in all organisms. It is part of cell membranes. About 50% of the cell membrane is composed of lipid of which the major constituent is phospholipid. Lyso-PE ( a specific member of the phospholipid group) is present in high quantities in food products containing egg yolk and meat. In dried egg yolk Lyso-PE constitutes 2% of the lipids present. Lyso-PE is also found in egg solids, cows milk, corn grains, corn starch, oats and wheat which are exempted from regulation under section25(b)(2) of FIFRA.

*C. Toxicological Profile*

Waivers for toxicology studies have been requested for phospholipid. Phospholipid is a fat found in food consumed by humans, animals, and is non-toxic to humans and animals. Sufficient data exist to assess the hazards of phospholipid and to make a determination on aggregate exposure, consistent with section 408(c)(2), for the exemptions from the requirement of a tolerance. The exposures, including dietary exposure, and risks associated

with establishing the requested exemption from the requirement of a tolerance follows.

Phospholipid is present in all cells in all organisms. It is part of the cell membranes. Lyso-PE (a specific phospholipid) is present in high quantities in food products containing egg yolk and meat. In dried egg yolk, the Lyso-PE constitutes 2% of the fat present. Egg solids are widely used in food products. In the USA, about 18 billion eggs are broken per year to produce egg white and egg solids. Because of this all acute toxicity, genotoxicity, and subchronic toxicity studies normally required for biochemical pesticides are waived.

*D. Aggregate Exposure*

Phospholipid is present in all cells in all organisms. It is a part of the cell membrane. Phospholipid is present in high quantities in food products containing egg yolk and meat.

1. *Dietary exposure—food*. It is anticipated that residues of phospholipid will be negligible in treated raw agricultural commodities. Due to the products lack of mammalian toxicity, any exposure if it occurred will not be harmful to humans. It is not anticipated that residues of phospholipid will occur in drinking water.

2. *Non-dietary exposure, non-occupational exposure*. Increased non-dietary exposure of phospholipid via lawn care, topical insect repellents, etc., is not applicable to this EUP application.

*E. Cumulative Exposure*

There is no anticipated potential for cumulative effects of phospholipid since it does not have a mode of toxicity.

*F. Endocrine Disruptors*

J P Bioregulators Inc., has no information to suggest that phospholipid will adversely affect the immune or endocrine systems.

*G. Safety Considerations*

The lack of toxicity of phospholipid is demonstrated by the above summary. Based on this information, the aggregate exposure to phospholipid over a lifetime should not pose appreciable risks to human health. There is a reasonable certainty that no harm will result from aggregate exposure to phospholipid residues. Exempting phospholipid from the requirement of a temporay tolerance should be considered safe and pose insignificant risk.

Egg solids are widely used in food products. In dried egg yolk, 2% of the lipids are Lyso-PE. Egg yolks are used in a variety of foods including baby food and infant formula. Lyso-PE is also present in human breast milk. There is a reasonable certainty that no harm will result to infants and children from aggregate exposure to phospholipid residues.

*H. Analytical method*

An analytical method for residues is not applicable as this proposes an exemption from the requirement of a tolerance.

*I. Existing Tolerances*

No tolerances or exemptions from the requirement of tolerance have been established or applied for domestically or internationally other than subject petition.

[FR Doc. 97–32183 Filed 12–9–97; 8:45 am]
BILLING CODE 6560–50–F

## FEDERAL EMERGENCY MANAGEMENT AGENCY

### Open Meeting, Technical Mapping Advisory Council

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with section 10(a)(2) of the Federal Advisory Committee Act, 5 App. 1, the Federal Emergency Management Agency gives notice that the following meeting will be held:

**NAME:** Technical Mapping Advisory Council.

**DATES OF MEETING:** December 11 and 12, 1997.

**PLACES:** The meeting will be held at the Thunderbird Motel, 2201 E. 78th St., Bloomington, MN.

**TIMES:** 8 a.m. to 6. p.m. on Thursday and 8 a.m. to 4 p.m. on Friday.

**PPROPOSED AGENDA:** Discussion of 1997 Annual Report.

**STATUS:** This meeting is open to the public.

**FOR FURTHER INFORMATION CONTACT:** Michael K. Buckley, P.E., Federal Emergency Management Agency, 500 C Street SW., room 421, Washington, DC 20472; telephone (202) 646–2756 or by fax (202) 646–4596.

**SUPPLEMENTARY INFORMATION:** Publication of this notice does not give a 15 day advance notice of the meeting as required by General Services Administration regulations. This shorter notice period resulted from reassignment of Agency staff.

Dated: December 8, 1997.

**Michael J. Armstrong,**

*Associate Director for Mitigation.*

[FR Doc. 97–32444 Filed 12–9–97; 8:45 am]
BILLING CODE 6718–04–M

## FEDERAL MARITIME COMMISSION

### Ocean Freight Forwarder License; Revocations

The Federal Maritime Commission hereby gives notice that the following freight forwarder licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, effective on the corresponding revocation dates shown below:

*License Number:* 208.
*Name:* Albert M. Ruiz, d/b/a York International Co.
*Address:* 33 West 46th street, Room 902, New York, NY 10036
*Date Revoked:* August 21, 1997.
*Reason:* Failed to maintain a valid surety bond.

*License Number:* 3895.
*Name:* Cargo Services International, Inc.
*Address:* 5190 N.W. 167th Street, Miami, FL 33014
*Date Revoked:* October 7, 1997.
*Reason:* Failed to maintain a valid surety bond.

*License Number:* 1096.
*Name:* Foreign Forwarding, Inc.
*Address:* 10300 West Hampton Avenue, Milwaukee, WI 53225–4099
*Date Revoked:* September 8, 1997.
*Reason:* Surrendered license voluntarily.

*License Number:* 1468.
*Name:* Metro Worldwide Shipping Inc.
*Address:* 147–20 181st Street, Jamaica, NY 11413
*Date Revoked:* August 29, 1997.
*Reason:* Surrendered license voluntarily.

*License Number:* 3449.
*Name:* The Echlin Sales Company
*Address:* 100 Double Beach Road, Branford, CT 06405
*Date Revoked:* September 9, 1997.
*Reason:* Surrendered license voluntarily.

**Bryant L. VanBrakel,**

*Director, Bureau of Tariffs, Certification and Licensing.*

[FR Doc. 97–32228 Filed 12–9–97; 8:45 am]
BILLING CODE 6730–01–M

## FEDERAL RESERVE SYSTEM

### Agency Information Collection Activities: Proposed Collection; Comment Request

**AGENCY:** Board of Governors of the Federal Reserve System.
**ACTION:** Notice.

**Background:**

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act, as per 5 CFR 1320.16, to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320 Appendix A.1. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number. Board-approved collections of information will be incorporated into the official OMB inventory of currently approved collections of information. A copy of the OMB 83-I and supporting statement and the approved collection of information instrument will be placed into OMB's public docket files. The following information collections, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collections, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority. Comments are invited on the following:

a. Whether the proposed collections of information are necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility;

b. The accuracy of the Federal Reserve's estimates of the burden of the proposed information collections, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected; and

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

**DATES:** Comments must be submitted on or before February 9, 1998.

**ADDRESSES:** Comments, which should refer to the OMB control number or agency form number, should be addressed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, DC 20551, or delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m., and to the security control room outside of those hours. Both the mail room and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, N.W. Comments received may be inspected in room M-P-500 between 9:00 a.m. and 5:00 p.m., except as provided in section 261.8 of the Board's Rules Regarding Availability of Information, 12 CFR 261.8(a).

A copy of the comments may also be submitted to the OMB desk officer for the Board: Alexander T. Hunt, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** A copy of the proposed form and instructions, the Paperwork Reduction Act Submission (OMB 83-I), supporting statement, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below.

Mary M. McLaughlin, Chief, Financial Reports Section (202-452-3829), Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may contact Diane Jenkins (202-452-3544), Board of Governors of the Federal Reserve System, Washington, DC 20551.

Proposal to approve under OMB delegated authority the extension for three years, without revision, of the following report:

*1. Report title*: Transfer Agent Registration and Amendment Form
*Agency form number*: FR TA-1
*OMB control number*: 7100-0099
*Frequency*: on occasion
*Reporters*: State member banks and their subsidiaries, bank holding companies, and certain nondeposit trust company subsidiaries of bank holding companies who are, or wish to register as, transfer agents
*Annual reporting hours*: 28
*Estimated average hours per response*: 1.25 (registrations); 0.17 (amendments)
*Number of respondents*: 41
Small businesses are not affected.

*General description of report*: This information collection is mandatory (sections 17A(c), 17(a), and 23(a) of the Securities Exchange Act, as amended (15 USC §§78q-1(c)(1) and (2), 78q(a)(3), and 78w(a)(1)) and is not given confidential treatment.

*Abstract*: The Securities Exchange Act requires any person acting as a transfer agent to register and to amend registration information as it changes. State member banks and their subsidiaries, bank holding companies, and certain nondeposit trust company subsidiaries of bank holding companies register with the Federal Reserve by submitting Form TA-1. The information collected includes the company name, all business addresses, and several questions about the registrant's proposed activities as a transfer agent. The Federal Reserve uses the information, which is available to the public upon request, to act upon registration applications and to aid in performing supervisory duties.

Proposal to approve under OMB delegated authority the implementation of the following report:

*1. Report title*: 1998 Survey of Consumer Finance
*Agency form number*: FR 3059
*OMB control number*: 7100-0287
*Frequency*: One-time survey
*Reporters*: U.S. families
*Annual reporting hours*: 6,900
*Estimated average hours per response*: 1.5
*Number of respondents*: 4,600
Small businesses are not affected.

*General description of report*: This information collection is voluntary (12 U.S.C. §§ 225a, 1821, 1828(c), 1842, and 1843) and is given confidential treatment (5 U.S.C. 552(b)(6)).

*Abstract*: The 1998 Survey of Consumer Finances would be the sixth triennial Survey of Consumer Finance since 1983, the beginning of the current series. This survey is the only source of representative information on the structure of U.S. families' finances. The proposed survey, to be conducted between June and December 1998, would collect data on the assets, debts, income, work history, pension rights, use of financial services, and attitudes of a sample of U.S. families.

Board of Governors of the Federal Reserve System, December 4, 1997.

**William W. Wiles,**

*Secretary of the Board.*

[FR Doc. 97–32218 Filed 12–9–97; 8:45 am]

**BILLING CODE 6210–01–F**

## FEDERAL RESERVE SYSTEM

### Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than December 24, 1997.

**A. Federal Reserve Bank of Richmond** (A. Linwood Gill III, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

*1. Arthur L. Walters*, Arlington, Virginia; to retain voting shares of Virginia Commerce Bank, Arlington, Virginia.

**B. Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

*1. Patricia Rhodes Trickey*, Cape Girardeau, Missouri; Teresa Rosette Maurer, Cape Girardeau, Missouri; Carla Jeanne Millham, Jackson, Missouri; Mary Suzanne Vickery, Cape Girardeau, Missouri; Bonnie Rhodes Poythress, Jackson, Missouri; Gloria Elaine Beussink, Jackson, Missouri; and Frances Eugene Rhodes, Cape Girardeau, Missouri, all acting in concert; to acquire voting shares of Reliable Community Bancshares, Inc., Perryville, Missouri, and thereby acquire Bank of Missouri, Perryville, Missouri.

Board of Governors of the Federal Reserve System, December 4, 1997.

**William W. Wiles,**

*Secretary of the Board.*

[FR Doc. 97–32221 Filed 12–9–97; 8:45 am]

BILLING CODE 6210–01–F

## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 2, 1998.

**A. Federal Reserve Bank of Chicago** (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

*1. Central Illinois Bancorp, Inc.*, Sidney, Illinois; to acquire 100 percent of the voting shares of CIB Bank (in organization), Indianapolis, Indiana.

Board of Governors of the Federal Reserve System, December 4, 1997.

**William W. Wiles,**

*Secretary of the Board.*

[FR Doc. 97–32219 Filed 12–9–97; 8:45 am]

BILLING CODE 6210–01–F

## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 5, 1998.

**A. Federal Reserve Bank of Atlanta** (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

*1. Regions Financial Corporation*, Birmingham, Alabama; to merge with Greenville Financial Corporation, Greenville, South Carolina, and thereby indirectly acquire Greenville National Bank, Greenville, South Carolina.

**B. Federal Reserve Bank of Chicago** (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

*1. Paramount Bancorp, Inc.*, Bingham Farms, Michigan; to become a bank holding company by acquiring 100 percent of the voting shares of Paramount Bank (in organization), Bingham Farms, Michigan.

Board of Governors of the Federal Reserve System, December 5, 1997.

**Jennifer J. Johnson,**

*Deputy Secretary of the Board.*

[FR Doc. 97–32341 Filed 12–9–97; 8:45 am]

BILLING CODE 6210–01–F

## FEDERAL RESERVE SYSTEM

### Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company that engages either

directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 24, 1997.

**A. Federal Reserve Bank of Atlanta** (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

*1. Regions Financial Corporation*, Montgomery, Alabama; to acquire PALFED, Inc., and thereby indirectly Palmetto Federal Savings Bank of South Carolina, both of Aiken, South Carolina, and thereby engage in operating a savings association, pursuant to § 225.28(b)(4)(ii) of the Board's Regulation Y. Comments regarding this application must be received by January 2, 1998.

**B. Federal Reserve Bank of Kansas City** (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

*1. Stockmens Financial Corporation*, Rushville, Nebraska; to acquire Electronic Commerce Management Group, LLC, Greenwood, Colorado (a joint venture), and thereby engage in leasing personal or real property, pursuant to § 225.28(b)(3) of the Board's Regulation Y; management consulting services, pursuant to § 225.28(b)(9) of the Board's Regulation Y; and data processing activities, pursuant to § 225.28(b)(14) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, December 4, 1997.

**William W. Wiles,**

*Secretary of the Board.*

[FR Doc. 97–32220 Filed 12–9–97; 8:45 am]

BILLING CODE 6210–01–F

## FEDERAL RESERVE SYSTEM

### Notice of Propoals to Engage in Permissible Nonabnking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities; Correction

This notice corrects a notice (FR Doc. 97-31467) published on page 63717 of the issue for Tuesday, December 2, 1997.

Under the Federal Reserve Bank of New York heading, the entry for Cedit Commerical De France, S.A., Paris, France, is revised to read as follows:

**A. Federal Reserve Bank of New York** (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

*1. Credit Commercial De France, S.A.*, Paris, France; to engage *de novo* through its subsidiary International Finance Corporation, New York, New York, and thereby engage in extending credit and servicing loans, pursuant to § 225.28(b)(1) of the Board's Regulation Y; activities related to extending credit, pursuant to § 225.28(b)(2) of the Board's Regulation Y; financial and investment advisory activities, pursuant to § 225.28(b)(6) of the Board's Regulation Y; agency transactional services for customer investments, pursuant to § 225.28(b)(7) of the Board's Regulation Y; and investment transactions as principal, pursuant to § 225.28(b)(8) of the Board's Regulation Y.

Comments on this application must be received by December 15, 1997.

Board of Governors of the Federal Reserve System, December 5, 1997.

**Jennifer J. Johnson,**

*Deputy Secretary of the Board.*

[FR Doc. 97–32339 Filed 12–9–97; 8:45 am]

BILLING CODE 6210–01–F

## FEDERAL RESERVE SYSTEM

### Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 26, 1997.

**A. Federal Reserve Bank of Philadelphia** (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105-1521:

*1. Fulton Financial Corporation*, Lancaster, Pennsylvania; to acquire Keystone Heritage Group, Inc. Lebanon, Pennsylvania, and thereby indrectly acquire Keystone Heritage Life Insurance Company, Lebanon, Pennsylvania, and thereby engage in insurance agency activities, pursuant to § 225.28(b)(11) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, December 5, 1997.

**Jennifer J. Johnson,**

*Deputy Secretary of the Board.*

[FR Doc. 97–32340 Filed 12–9–97; 8:45 am]

BILLING CODE 6210–01–F

## FEDERAL RESERVE SERVICE

### Sunshine Act Meeting

**AGENCY HOLDING THE MEETING:** Board of Governors of the Federal Reserve System

**TIME AND DATE:** 12:00 noon, Monday, December 15, 1997.

**PLACE:** Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:**

1. Proposed 1998 Federal Reserve Board officer salary structure and merit program.

2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

3. Any matters carried forward from a previously announced meeting.

**CONTACT PERSON FOR MORE INFORMATION:** Joseph R. Coyne, Assistant to the Board; 202–452–3204.

**SUPPLEMENTARY INFORMATION:** You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.bog.frb.fed.us for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: December 5, 1997.

**William W. Wiles,**

*Secretary of the Board.*

[FR Doc. 97–32394 Filed 12–5–97; 4:27 pm]

**BILLING CODE 6210–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Agency For Health Care Policy And Research

### Contract Review Meeting

In accordance with Section 10(a) of the Federal Advisory Committee Act (5 U.S.C. Appendix 2), the Agency for Health Care Policy and Research (AHCPR) announces the following technical review committee to meet during the month of December 1997:

*Name:* Technical Review Committee for the AHCPR User Liaison Program Dissemination Support Contracts.

*Date and Time:* December 17–18, 1997, 9:00 a.m.–5:00 p.m.

*Place:* Agency for Health Care Policy and Research, Executive Office Building, 6th Floor (East Wing) Conference Rooms, Room 2 on December 17; Room 1 on December 18, 2101 East Jefferson Street, Rockville, MD 20852.

This meeting will be closed to the public.

*Purpose:* The Technical Review Committee's charge is to provide, on behalf of the AHCPR Contracts Review Committee, recommendations to the Administrator, AHCPR, regarding the technical merit of contract proposals submitted in response to a specific Request for Proposals for the User Liaison Program (ULP) Dissemination Support contracts.

The purpose of these contracts is to provide for the timely and effective transmission of relevant health services research findings and related descriptive and programmatic information to a broad spectrum of selected public and private users of health services research to assist them in managing more effectively the problems and issues that confront them with respect to the design, delivery, quality, evaluation, and financing of health services. In performance of these contracts, the contractors shall plan, develop, and conduct workshops, seminars, and meetings and prepare research syntheses, background papers, or technical assistance documents on health policy issues for selected target audiences. The target audiences of users of health services research include state and local officials; health care consumers, purchasers, plans, practitioners, and policymakers (including Federal executive branch officials). In planning and conducting workshops, the contractors will be responsible for not only conducting comprehensive and objective assessments of relevant information, but also for effectively presenting such information in a manner which is tailored to the particular needs of the selected target audience(s).

*Agenda:* The Committee meeting will be devoted entirely to the technical review and evaluation of contract proposals submitted in response to the above referenced Request for Proposals. The Administrator, AHCPR, has made a formal determination that this meeting will not be open to the public. This action is necessary to protect the free and full exchange of views in the contract evaluation process and safeguard confidential proprietary information, and personal information concerning individuals associated with the proposals that may be discussed during the meeting. This action is taken in accordance with section 10(d) of the Federal Advisory Committee Act, 5 U.S.C., Appendix 2, 5 U.S.C. 552b(c)(6), 41 CFR Section 101–6.1023 and Department procurement regulations, 48 CFR section 315.604(d).

Anyone wishing to obtain information regarding this meeting should contact Marcia Clark, User Liaison Program, Center for Health Information Dissemination, Agency for Health Care Policy and Research, 2101 East Jefferson Street, Suite 401, Rockville, Maryland 20852, 301/594–6668.

Dated: December 3, 1997.

**John M. Eisenberg,**

*Administrator.*

[FR Doc. 97–32281 Filed 12–9–97; 8:45 am]

**BILLING CODE 4160–90–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### Advisory Committee; Science Board to the Food and Drug Administration; Formation of a Subcommittee

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the formation of a subcommittee of the Science Board to the Food and Drug Administration (Science Board). The subcommittee entitled ''Subcommittee for Center for Biologics Evaluation and Research Review'' has been established to address scientific issues related to the research programs conducted by the FDA's Center for Biologics Evaluation and Research. The subcommittee's findings will be presented to the Science Board for full public discussion at a future meeting.

**FOR FURTHER INFORMATION CONTACT:** Susan K. Meadows, Office of Science (HF–32), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3340.

**SUPPLEMENTARY INFORMATION:** FDA is announcing the formation of a subcommittee of the Science Board. This subcommittee has been established to address issues related to the scientific quality, mission relevance, and scientific management and leadership of the research programs conducted by FDA's Center for Biologics Evaluation and Research. The subcommittee will hold its meeting(s) over the next 3 to 4 months to collect information on biologics research programs, to conduct an external peer review of biologics research for quality and relevance, and to assess an annual programmatic prioritization model. The subcommittee's findings will be presented to the Science Board for full public discussion at a future meeting that will be announced in the **Federal Register** prior to the meeting. This notice is issued under the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92–463 (5 U.S.C. app. 2)).

Dated: December 4, 1997.

**Michael A. Friedman,**

*Deputy Commissioner for Operations.*

[FR Doc. 97–32275 Filed 12–9–97; 8:45 am]

**BILLING CODE 4160–01–F**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### Advisory Committee; Science Board to the Food and Drug Administration; Formation of a Subcommittee

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the formation of a subcommittee of the Science Board to the Food and Drug Administration (Science Board). The subcommittee entitled ''Board of Scientific Counselors'' has been established to address scientific issues related to the research programs conducted by the Food and Drug Administration. The subcommittee's findings will be presented to the Science Board for full public discussion at future meetings.

**FOR FURTHER INFORMATION CONTACT:** Susan K. Meadows, Office of Science

(HF–32), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD, 20857, 301–827–3340.

**SUPPLEMENTARY INFORMATION:** FDA is announcing the formation of a subcommittee of the Science Board. The subcommittee has been established to address issues related to the scientific quality, mission relevance, and scientific management and leadership of research programs conducted by FDA. The subcommittee will meet several times over the next 2 years to collect and review information on FDA's scientific research programs and to discuss a validated process for a coordinated, external, scientific peer review of the agency's research programs. The subcommittee's findings will be presented to the Science Board for full public discussion at future meetings that will be announced in the **Federal Register** prior to the meetings. This notice is issued under the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92–463 (5 U.S.C. app.2)).

Dated: December 4, 1997.

**Michael A. Friedman,**

*Deputy Commissioner for Operations.*

[FR Doc. 97–32276 Filed 12–9–97; 8:45 am]

**BILLING CODE 4160–01–F**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 97F–0504]**

### The Goodyear Tire and Rubber Co.; Filing of Food Additive Petition

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that the Goodyear Tire and Rubber Co. has filed a petition proposing that the food additive regulations be amended to provide for the expanded safe use of butylated reaction product of *p*-cresol and dicyclopentadiene for use as an antioxidant in acrylonitrile/butadiene/styrene copolymers in contact with food.

**FOR FURTHER INFORMATION CONTACT:** Hortense S. Macon, Center for Food Safety and Applied Nutrition (HFS–205), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3086.

**SUPPLEMENTARY INFORMATION:** Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 8B4561) has been filed by The Goodyear Tire and Rubber Co., c/o Keller and Heckman LLP, 1001 G St. NW., suite 500 West, Washington, DC 20001. The petition proposes to amend the food additive regulations in § 178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010) to provide for the expanded safe use of butylated reaction product of *p*-cresol and dicyclopentadiene for use as an antioxidant in acrylonitrile/butadiene/styrene copolymers in contact with food.

The agency has determined under 21 CFR 25.32(i) that this action is of the type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Dated: December 2, 1997.

**Alan M. Rulis,**

*Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.*

[FR Doc. 97–32358 Filed 12–9–97; 8:45 am]

**BILLING CODE 4160–01–F**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 97M–0501]**

### Abbott Laboratories; Premarket Approval of IMx® PSA and AxSYM® PSA Assays

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing its approval of the supplemental application by Abbott Laboratories, Diagnostics Div., Abbott Park, IL, for premarket approval, under the Federal Food, Drug, and Cosmetic Act (the act), of the IMx® PSA and AxSYM® PSA assay. FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of August 7, 1997, of the approval of the supplemental application.

**DATES:** Petitions for administrative review by January 9, 1998.

**ADDRESSES:** Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Peter E. Maxim, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 301–594–1293.

**SUPPLEMENTARY INFORMATION:** On November 2, 1994, Abbott Laboratories, Diagnostics Div., Abbott Park, IL 60064, submitted to CDRH a supplemental application for premarket approval of IMx® PSA and AxSYM® PSA assays. The devices are microparticle enzyme immunoassays (MEIA) for the quantitative measurement of Prostate Specific Antigen (PSA) in human serum as an aid in the detection of prostate cancer when used in conjunction with digital rectal exam (DRE) in men aged 50 years or older. Prostatic biopsy is required for diagnosis of cancer.

In accordance with the provisions of section 515(c)(2) of the act (21 U.S.C. 360e(c)(2)) as amended by the Safe Medical Devices Act of 1990, this premarket approval application (PMA) was not referred to the Immunology Devices Panel of the Medical Devices Advisory Committee, an FDA advisory committee, for review and recommendation because the information in the PMA substantially duplicates information previously reviewed by this panel.

On August 7, 1997, CDRH approved the supplemental application by a letter to the applicant from the Deputy Director of Clinical and Review Policy, Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

### Opportunity for Administrative Review

Section 515(d)(3) of the act authorizes any interested person to petition, under section 515(g) of the act, for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under 21 CFR part 12 of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under 21 CFR 10.33(b). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of

material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of the review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before January 9, 1998, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: October 31, 1997.

**Joseph A. Levitt,**

*Deputy Director for Regulations Policy, Center for Devices and Radiological Health.*

[FR Doc. 97–32216 Filed 12–9–97; 8:45 am]

BILLING CODE 4160–01–F

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Care Financing Administration

**[Document Identifier: HCFA–320]**

### Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

*Type of Information Collection Request:* Reinstatement, without change, of a previously approved collection for which approval has expired; *Title of Information Collection:* Corrective Action Plan (Medicaid Eligibility Quality Control); *Form No.:* HCFA–320; *Use:* Medicaid eligibility quality control (MEQC) is a State-administered system designed to improve the management of the Medicaid program and reduce the level of misspent Medicaid funds. Each month, States select a sample of Medicaid cases from their inventory of eligible cases and conduct QC reviews to determine the accuracy of the eligibility determinations. This Corrective Action Plan allows HCFA to determine the types of corrective actions used by States. Sound and effective corrective actions used by one State to correct causes of errors and reduce erroneous Medicaid payments are shared with other States experiencing the same types of error-causing problems. *Frequency:* Annually; *Affected Public:* State, Local or Tribal Government; *Number of Respondents:* 51; *Total Annual Responses:* 51; *Total Annual Hours:* 20,400.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Information Technology Investment Management Group, Division of HCFA Enterprise Standards, Attention: John Rudolph, Room C2–26–17, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: December 2, 1997

**John P. Burke III,**

*HCFA Reports Clearance Officer, Division of HCFA Enterprise Standards, Health Care Financing Administration.*

[FR Doc. 97–32320 Filed 12–9–97; 8:45 am]

BILLING CODE 4120–03–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

### Availability of the HRSA Competitive Grants Preview

### Correction

In notice document 97–26645 appearing on page 52905 of the issue on Thursday, October 9, 1997, make the following correction:

On page 52905, in the second column under the heading ''Centers of Excellence (COE)'' in the sixth paragraph labeled as ''Estimated Amount of This Competition,'' the amount should read ''$1,500,000.''

Dated: December 3, 1997.

**Claude Earl Fox,**

*Acting Administrator.*

[FR Doc. 97–32277 Filed 12–9–97; 8:45 am]

BILLING CODE 4160–15–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

### Final Review Criteria for Grants for the National Research Service Awards: Primary Care Research for Fiscal Year 1998

The Health Resources and Services Administration (HRSA) National Research Service Awards: Primary Care Research (NRSA) institutional training grants (T32) are provided to accredited public or private nonprofit schools of medicine, osteopathy, dentistry, or a public or private nonprofit hospital or other entity which is affiliated with an entity that has received grants or contracts under section 747, 748, or 749 of the PHS Act, agrees to use the funding for research in primary medical care, and is located in a State. The NRSA program is authorized by Title IV, Section 487(d)(3)(A) of the Public Health Service Act.

A notice was published in the **Federal Register** at 62 FR 49521 on September 22, 1997, for review criteria for the above-referenced program. No comments were received within the 30 day comment period. Therefore, the review criteria remain as proposed.

### Final Review Criteria

The following criteria are for National Research Service Awards in primary care research:

*1. Program Characteristics:*

Objectives, design, and direction of the research training program—including the probability of achieving stated goals.

Substantive and methodological content of the proposed program and its relevance to the Program Objectives noted above, including relevant descriptions of courses and experiential opportunities offered and/or required.

The extent to which proposed approaches address areas in need of research given changes in the health care delivery system.

*2. Program Support and Organizational Structure and Plans*

The institutional training environment, including the level of institutional commitment, quality of the facilities, availability of appropriate courses, and availability of research support.

Caliber of preceptors as researchers, including successful research support;

Organizational structure of the proposed training program, including delineation of administrative responsibilities for planning, oversight, and evaluation.

Demonstration of cooperation by any proposed collaborating facilities, institutions, or departments in providing research experiences and/or sites for trainees, including (where applicable) documentation of mechanisms by which trainees will be integrated into the ongoing primary medical care research activities of other entities.

When appropriate, the concomitant research training of health-professional postdoctorates (e.g., individuals with the M.D., D.O., D.D.S./D.M.D., etc.) with basic science postdoctorates (e.g., individuals with a Ph.D., etc.) or linkages with basic science department.

Demonstration of extent to which and ways in which HRSA support will be (has been in the past) leveraged through the use of other Federal and private resources to maximize primary medical care research training within the institution.

Availability of other relevant support.

*3. Trainee Recruitment & Retention Plans*

Recruitment and selection plans for trainees and the availability of high-quality candidates, including minority trainees (see below for details).

When appropriate, record of the research training program in retaining health-professional postdoctoral trainees for at least 2 years in research training or other research activities.

*4. Program Record and Evaluation Plans*

Past research training record of both the program and the designated preceptors as determined by the success of former trainees in seeking further career development and in establishing productive scientific careers. Evidence of further career development can include receipt of fellowships, career awards, a prestigious training appointment, and similar accomplishments. Evidence of a productive scientific career can include a record of successful competition for individual research grants, receipt of special honors, a record of publications, receipt of patents, promotion to prestigious positions in academe, industry, or health policy and any other appropriate measure of success consistent with the nature and duration of the training received.

Record of the research training program in recruiting and retaining trainees, noting past annual success rates in filling committed slots.

Proposed methods for monitoring and evaluating performance of trainees and the overall program, record of trainees in obtaining individual research awards or fellowships following training, and in establishing careers in primary medical care research.

*5. Budget*

Reasonableness of the proposed budget, including number and levels of trainees, in relation to the research training.

For additional information, please contact: Enrique Fernandez, M.D., Division of Medicine, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 9A–20, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone : (301) 443–1467, FAX: (301) 443–8890.

Dated: December 3, 1997.

**Claude Earl Fox,**

*Acting Administrator.*

[FR Doc. 97–32279 Filed 12–9–97; 8:45 am]

BILLING CODE 4160–15–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

### Final Review Criterion for Grants for Primary Care Training Programs for Fiscal Year 1998

Grants for Primary Care Training programs are authorized under sections 747(a) and (b), 748, 750 and 751, title VII of the Public Health Service Act, as amended by the Health Professions Education Extension Amendments of 1992, Pub. L. 102–408, dated October 13, 1992. These grant programs include:

Grants for Predoctoral Training in Family Medicine
Grants for Faculty Development in Family Medicine
Grants for Graduate Training in Family Medicine
Grants for Establishment of Departments of Family Medicine
Grants for Residency Training in General Internal Medicine and General Pediatrics
Grants for Faculty Development in General Internal Medicine and General Pediatrics
Grants for Physician Assistant Training
Grants for Podiatric Primary Care Residency Training

A notice was published in the **Federal Register** at 62 FR 46502 on September 3, 1997, for a review criterion for the above-referenced programs. No comments were received within the 30 day comment period. Therefore, the review criterion remains as proposed.

**Final Review Criterion**

The following criterion has been added to the existing review criteria established in 61 FR 52034 on October 4, 1996:

5. Project impact/influence in shaping the curriculum, program, department, institution and the community.

The review criterion is finalized in this combined notice, rather than individual program announcements, to provide consistent review of all primary care medical education grant applications.

If additional information is needed, please contact: Enrique Fernandez, M.D., Division of Medicine, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 9A–20, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443–1467, FAX: (301) 443–8890.

Dated: December 4, 1997.

**Claude Earl Fox,**

*Acting Administrator.*

[FR Doc. 97–32280 Filed 12–9–97; 8:45 am]

BILLING CODE 4160–15–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

### National Vaccine Injury Compensation Program; List of Petitions Received

**AGENCY:** Health Resources and Services Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Health Resources and Services Administration (HRSA) is publishing this notice of petitions received under the National Vaccine Injury Compensation Program (''the Program''), as required by section 2112(b)(2) of the Public Health Service (PHS) Act, as amended. While the Secretary of Health and Human Services is named as the respondent in all proceedings brought by the filing of petitions for compensation under the Program, the United States Court of Federal Claims is charged by statute with responsibility for considering and acting upon the petitions.

**FOR FURTHER INFORMATION CONTACT:** For information about requirements for filing petitions, and the Program generally, contact the Clerk, United States Court of Federal Claims, 717 Madison Place, N.W., Washington, D.C. 20005, (202) 219–9657. For information on HRSA's role in the Program, contact the Director, National Vaccine Injury Compensation Program, 5600 Fishers Lane, Room 8A35, Rockville, MD 20857, (301) 443–6593.

**SUPPLEMENTARY INFORMATION:** The Program provides a system of no-fault compensation for certain individuals who have been injured by specified childhood vaccines. Subtitle 2 of title XXI of the PHS Act, 42 U.S.C. 300aa–10 *et seq.*, provides that those seeking compensation are to file a petition with the U.S. Court of Federal Claims and to serve a copy of the petition on the Secretary of Health and Human Services, who is named as the respondent in each proceeding. The Secretary has delegated her responsibility under the Program to HRSA. The Court is directed by statute to appoint special masters who take evidence, conduct hearings as appropriate, and make initial decisions as to eligibility for, and amount of, compensation.

A petition may be filed with respect to injuries, disabilities, illnesses, conditions, and deaths resulting from vaccines described in the Vaccine Injury Table (the Table) set forth at section 2114 of the PHS Act or as set forth at 42 CFR 100.3, as applicable. This Table lists for each covered childhood vaccine the conditions which will lead to compensation and, for each condition, the time period for occurrence of the first symptom or manifestation of onset or of significant aggravation after vaccine administration. Compensation may also be awarded for conditions not listed in the Table and for conditions that are manifested after the time periods specified in the Table, but only if the petitioner shows that the condition was caused by one of the listed vaccines.

Section 2112(b)(2) of the PHS Act, 42 U.S.C. 300aa–12(b)(2), requires that the Secretary publish in the **Federal Register** a notice of each petition filed. Set forth below is a list of petitions received by HRSA on July 2, 1997, through September 29, 1997.

Section 2112(b)(2) also provides that the special master ''shall afford all interested persons an opportunity to submit relevant, written information'' relating to the following:

1. The existence of evidence ''that there is not a preponderance of the evidence that the illness, disability, injury, condition, or death described in the petition is due to factors unrelated to the administration of the vaccine described in the petition,'' and

2. Any allegation in a petition that the petitioner either:

(a) ''Sustained, or had significantly aggravated, any illness, disability, injury, or condition not set forth in the Table but which was caused by'' one of the vaccines referred to in the Table, or

(b) ''Sustained, or had significantly aggravated, any illness, disability, injury, or condition set forth in the Table the first symptom or manifestation of the onset or significant aggravation of which did not occur within the time period set forth in the Table but which was caused by a vaccine'' referred to in the Table.

This notice will also serve as the special master's invitation to all interested persons to submit written information relevant to the issues described above in the case of the petitions listed below. Any person choosing to do so should file an original and three (3) copies of the information with the Clerk of the U.S. Court of Federal Claims at the address listed above (under the heading **FOR FURTHER INFORMATION CONTACT**), with a copy to HRSA addressed to Director, Bureau of Health Professions, 5600 Fishers Lane, Room 8–05, Rockville, MD 20857. The Court's caption (Petitioner's Name v. Secretary of Health and Human Services) and the docket number assigned to the petition should be used as the caption for the written submission.

Chapter 35 of title 44, United States Code, related to paperwork reduction, does not apply to information required for purposes of carrying out the Program.

**List of Petitions**

1. Brenda Scott-Sheppard, Boston, Massachusetts, Court of Federal Claims Number 97–0449 V
2. Joann O'Loughlin, Fremont, California, Court of Federal Claims Number 97–0458 V
3. Melody and John Harris on behalf of Christina Harris, San Mateo, California, Court of Federal Claims Number 97–0470 V
4. Anne M. Nagel, Little Falls, Minnesota, Court of Federal Claims Number 97–0479 V
5. Debra Graham Robert, Birmingham, Alabama, Court of Federal Claims Number 97–0501 V
6. Betty and Freeman Wingard on behalf of Lori Beth Wingard, LaGrange, Indiana, Court of Federal Claims Number 97–0502 V
7. Tatyana and Alex Vainshelboim on behalf of Jane Vainshelboim, Morganville, New Jersey, Court of Federal Claims Number 97–0516 V
8. Hans J. Herkert on behalf of John Henry Herkert, Cold Spring, New York, Court of Federal Claims Number 97–0518 V
9. Abhinav and Mija Le Trehan on behalf of Daniel Lee Trehan, Kansas City, Missouri, Court of Federal Claims Number 97–0528 V
10. Ellen and Charles Eiss on behalf of Gabrielle Eiss, Coral Springs, Florida, Court of Federal Claims Number 97–0529 V
11. Elham Rafla-Yuan, Tampa, Florida, Court of Federal Claims Number 97–0531 V
12. John R. Kline, Buffalo, New York, Court of Federal Claims Number 97–0535 V
13. Lino Delgado and Gricer Diaz on behalf of Coralys Gricer Delgado-Diaz, Rio Piedras, Puerto Rico, Court of Federal Claims Number 97–0538 V
14. Pauline Fadelalla, New York, New York, Court of Federal Claims Number 97–0573 V
15. Robin D. Blankenship, Ocala, Florida, Court of Federal Claims Number 97–0574 V
16. Madeline H. and William F. Warnock, Jr. on behalf of Benjamin Perry Warnock, Alexandria, Virginia, Court of Federal Claims Number 97–0585 V
17. Cynthia Peters on behalf of Kendall P. Lumsden, Cary, North Carolina, Court of Federal Claims Number 97–0588 V
18. Mary Alice Nanney, Brandon, Mississippi, Court of Federal Claims Number 97–0590 V
19. Shannon E. Casey, Vienna, Virginia, Court of Federal Claims Number 97–0612 V
20. Tracy Lynn Nichols on behalf of Shelby Nichols, Angier, North Carolina, Court of Federal Claims Number 97–0625 V
21. Nikki and David McColm on behalf of Nicholas Vernon McColm, Astoria,

Oregon, Court of Federal Claims Number 97–0631 V

22. Kim and Daniel Olexiewicz on behalf of Jason Olexiewicz, Deceased, Encino, California, Court of Federal Claims Number 97–0638 V
23. Frances and James DeRoche on behalf of John-Paul D. DeRoche, La Canada, California, Court of Federal Claims Number 97–0643 V
24. Dawn and Douglas Biron on behalf of Thomas J. Biron, Chisago, Minnesota, Court of Federal Claims Number 97–0651 V

Dated: December 4, 1997.

**Claude Earl Fox,**

*Acting Administrator.*

[FR Doc. 97–32278 Filed 12–9–97; 8:45 am]

**BILLING CODE 4160–15–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Public Health Service

### Centers for Disease Control and Prevention; Statement of Organization, Functions, and Delegations of Authority

Part C (Centers for Disease Control and Prevention) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–76, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 62 FR 53649, dated October 15, 1997) is amended to reflect the establishment of Vaccine-Preventable Disease Eradication Division (VPDED) and the abolishment of the Polio Eradication Activity within National Immunization Program (NIP), Centers for Disease Control and Prevention (CDC). The functional statement for the Office of the Director, NIP, is being revised to be consistent with the subject reorganization.

Section C–B, Organization and Functions, is hereby amended as follows:

Revise the functional statement for the *Office of the Director (CJ1), National Immunization Program (CJ),* as follows:

Delete item (11) and renumber the remaining items accordingly. Delete the function for item (12) and insert the following: Serves as the principal CDC focus for liaison and coordination with other Department of Health and Human Services operating divisions and staff offices, federal agencies, state, and local health authorities, and public and private organizations concerned with immunization activities.

Delete in their entirety the title and functional statement for the *Polio Eradication Activity (CJ12).*

After the functional statement for the *Communicty Outreach and Planning Branch (CJ45),* insert the following:

*Vaccine-Preventable Disease Eradication Division (CJ5).* (1) Provides national leadership and coordination of the National Immunization Program (NIP) efforts to eradicate polio, measles, and other vaccine-preventable diseases (VPDs) which may be targeted for eradication in the future, in collaboration with the World Health Organization (WHO) and its regional officer, UNICEF, Rotary International, USAID, other international organizations and agencies, and CDC Centers/Institute/Offices (CIOs); (2) provides short- and long-term consultation and technical assistance to WHO, UNICEF, and foreign countries involved in the global eradication of polio and measles and participates in international advisory group meetings regarding polio and measles eradication; (3) administers grants to WHO, UNICEF, and other international partners as appropriate for the provision of technical, programmatic, and laboratory support, and vaccine procurement for initiatives to eradicate polio, measles, and other VPDs; (4) designs and participates in international research, monitoring, and evaluation projects to increase the effectiveness of polio, measles, and other eradication strategies as may be developed; (5) develops strategies to improve the technical skills and problem-solving abilities of program managers and health care workers in other countries; (6) refines strategies developed for the eradication of polio and measles in the Western Hemisphere for implementation in other parts of the world; (7) assists other countries in projects to improve surveillance for polio, measles, and other VPDs, including development of computerized systems for disease monitoring; (8) assists WHO, UNICEF, and other partner organizations in strengthening global epidemiologic and laboratory surveillance for polio, measles, and other VODs targeted for eradication; (9) prepares articles based on findings for publication in international professional journals and presentation at international conferences; (10) collaborates with other countries, WHO, UNICEF, and advocacy groups, to ensure the availability of sufficient funds to purchase an adequate supply of polio and measles vaccine, and funds for technical support, for use in polio and measles eradication efforts.

*Office of the Director (CJ51).* (1) Manages, directs, and coordinates the activities of the division; (2) provides leadership in policy formation, program planning and development, program management, and operations of the division; (3) identifies needs and resources for new initiatives and assigns responsibilities for their development; (4) oversees the division's activities and expenditures; (5) serves as the principal CDC focus for liaison and coordination on VPD eradication programs with CDC CIOs, other federal agencies, international organizations, foreign governments, and other organizations concerned with VPD eradication.

*(Program Operations Branch (CJ52).* (1) Plans, coordinates, and directs programmatic activities in NIP to eradicate polio, measles, and other VPDs; (2) provides short- and long-term programmatic assistance to WHO, UNICEF, and foreign countries involved in the global eradication of polio and measles and participates in international advisory group meetings regarding polio and measles eradication; (3) administers grants to UNICEF and WHO for provision of technical, programmatic, and laboratory support, and vaccine procurement; (4) provides administrative and programmatic support to all staff including staff assigned outside of the Atlanta area; (5) provides oversight of budget and accounting services for the division; (6) develops and implements disease eradication training courses for staff from CDC, WHO, UNICEF, Rotary International, and other immunization partners; (7) coordinates advocacy activities with Rotary International, USAID, WHO, UNICEF, and other global partners to ensure the availability of adequate resources for polio, measles, and other VPD eradication activities.

*Technical Services Branch (CJ53).* (1) Plans, coordinates, and directs technical activities related to NIP efforts to eradicate polio, measles, and other VPDs, in collaboration with the WHO and its regional offices, UNICEF, Rotary International, USAID, other international organizations and agencies, and other CDC CIOs; (2) provides short- and long-term consultation and technical assistance to WHO, UNICEF, and foreign countries involved in the global eradication of polio and measles and participates in international advisory group meetings regarding polio and measles eradication; (3) designs and participates in international research, monitoring, and evaluation projects to increase the effectiveness of polio and measles eradication strategies; (4) develops strategies to improve the technical skills and problem-solving abilities of program managers and health care

workers in other countries; (5) refines strategies developed for the eradication of polio and measles in the Western Hemisphere for implementation in other countries; (6) assists other countries in projects to improve surveillance for polio, measles, and other VPDs, including development of computerized systems for disease monitoring; (7) assists WHO, UNICEF, and other partner organizations in strengthening global epidemiologic and laboratory surveillance for polio, measles, and other VPDs targeted for eradication; (8) prepares articles based on findings for publication in international professional journals and presentation at international conferences; (9) provides technical training as part of division-sponsored courses for staff of CDC, WHO, UNICEF, Rotary International, and other immunization partners.

Dated: November 24, 1997.

**David Satcher,**

*Director.*

[FR Doc. 97–32256 Filed 10–9–97; 8:45 am]

BILLING CODE 4160–18–M

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–4263–N–61]**

### Notice of Proposed Information, Collection for Public Comment; Technical Assistance for Community Planning and Development, Programs

**AGENCY:** Office of the Assistant Secretary for Community Planning and Development, HUD.

**ACTION:** Notice of Proposed Information Collection for Public Comments.

**SUMMARY:** The proposed information collection requirement for technical assistance for Community Planning and Development (CPD) programs described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

**DATES:** Comments due: February 9, 1998.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Reports Liaison Officer, Shelia E. Jones, Department of Housing and Urban Development, 451 7th Street, SW, Room 7230, Washington, DC 20410.

**FOR FURTHER INFORMATION CONTACT:** Lyn T. Whitcomb, Director, Technical Assistance Division, (202) 708–3176 (this is not a toll-free number).

**SUPPLEMENTARY INFORMATION:** The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35 as amended).

The Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

*Title of Proposal:* Technical Assistance for Community Planning and Development Programs.

*OMB Control Number, if applicable:*

*Description of the need for the information and proposed use:*

Application information is needed to determine competition winners, i.e. those technical assistance (TA) providers best able to offer local jurisdictions an ability to shape their CPD resources and other available resources into effective, coordinated, neighborhood and community development strategies to revitalize and physically, socially and economically strengthen their communities. The application for the competition requires the completion of Standard Form (SF) 424, ''Application for Federal Assistance'' and SF 424B, ''Assurances—Non-Construction Programs'' as well as supplementary information such as a transmittal letter, identification of field offices to be served and amounts of funds requested for each field office, a statement as to the use of pass-through funds and qualification as a primarily single-State provider, a Statement of Work, a narrative statement addressing the factors for award, a budget-by-task by field office and a summary budget for each program. After awards are made, providers are required to submit a work plan which includes a planned schedule for accomplishing each of the planned activities/tasks to be accomplished with TA funds, the amount of funds budgeted for each activity/task and the staff and other resources allocated to each activity/task. Narrative quarterly reports are required so that the provider's performance can be evaluated and measured against the work plan. Quarterly reports also require submission of the SF 269A, a financial status report. A narrative final report and final SF 269A are also required.

Previous information collection was authorized under OMB Control Number 2535–0084. Changes in administrative responsibilities for TA cooperative agreements within the Department necessitate a new request for approval. However, no substantive changes in information collection have occurred.

*Agency form numbers, if applicable:* SF 269A, SF 424 and SF 424B.

*Members of affected public:* Organizations or State and local governments equipped to provide technical assistance to recipients of CPD programs.

*Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:* The previous Notice of Funding Availability (NOFA) for technical assistance providers for CPD programs elicited approximately 280 responses. It is anticipated that approximately the same number will respond to the upcoming NOFA. Awards were made to approximately 90 providers and it is expected that the same number will be awarded during this round of funding. The Department estimates that each applicant will require an average of forty hours to prepare an application. Winners of the competition will be required to develop a work plan, requiring approximately eight hours, submit quarterly reports needing approximately four hours each, (including a final report) and perform recordkeeping to include submission of vouchers for reimbursement, estimated at 12 hours annually. The specific numbers are as follows:

| | Number of respondents | Number of responses per respondent frequency | Total annual responses | Hours per response | Total hours |
|---|---|---|---|---|---|
| Applications | 280 | 1 | 280 | 40 | 11,200 |
| Workplan Development | 90 | 1 | 90 | 8 | 720 |
| Quarterly Reports (including final report) | 90 | 4 | 360 | 4 | 1,440 |
| Recordkeeping | 90 | 12 | 1080 | 1 | 1,080 |
| Total | | | | | 14,440 |

*Status of the proposed information collection:* Publication of the Notice of Funding Availability is anticipated in January 1998. Awards are expected to be made by September 1998.

**Authority:** Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: December 2, 1997.

**Saul N. Ramirez, Jr.,**

*Assistant Secretary for Community Planning and Development.*

[FR Doc. 97–32248 Filed 12–9–97; 8:45 am]

**BILLING CODE 4210–29–M**

## DEPARTMENT OF THE INTERIOR

## Geological Survey

## Species at Risk Program

**AGENCY:** Biological Resources Division, U.S. Geological Survey; Interior.

**ACTION:** Notice of availability.

**SUMMARY:** The Biological Resources Division (BRD) is announcing the availability of funds through the Species at Risk Program (SAR). The basic purpose of SAR is to fund short-term research and assessment projects to generate information that allows development of conservation agreements, action plans, and management alternatives that provide for the protection of flora and fauna and their habitats and thereby reduce the need for listing species as threatened or endangered.

**DATES:** Information packages describing requirements for participation in this program will be available upon request until December 31, 1997. Pre-proposals are due to the address below by January 2, 1998.

**ADDRESSES:** Parties interested in this program should request an information package from: Species at Risk Program, 12201 Sunrise Valley Drive, MS 300, Reston, VA 20192 ATTN: Dr. Nancy Milton.

**FOR FURTHER INFORMATION CONTACT:** Dr. Nancy Milton, Species at Risk Program, 12201 Sunrise Valley Drive, MS 300, Reston, VA 20192, nancy__m__milton@nbs.gov; or 703–648–4074.

**SUPPLEMENTARY INFORMATION:**

### A. Purpose

Species at Risk (SAR) is a program that develops scientific information on the status of sensitive species or group of species, particularly with respect to the relationship of species abundance and distribution to habitat conditions and stresses. The basic purpose of SAR is to generate information that allows the development of conservation agreements, action plans, management alternatives, etc., that provide for the protection of species and their habitats and thereby preclude the need for listing species as threatened or endangered.

The initiative provides an opportunity for scientists to participate through survey and research activities. Projects are specifically intended to be of short duration and should seek to optimize partnerships with Federal agencies, states, universities, and the private sector. Successful SAR projects are often conducted by investigators who have identified key, small but critical gaps in our biological knowledge. Projects then fill these gaps and provide resource managers, regulators, and private landowners with usable information from which prudent resource management decisions can be made.

This initiative is designed to develop strategies that will assure long-term, population stability for targeted species and reduce the likelihood they will have to be dealt with through the regulatory processes. Projects should fit into one of two categories:

1. Projects should focus on species or groups of species for which their is concern but limited information on their abundance, distribution, and/or status. Projects should identify or develop new information that will reduce the need for a formal listing under the Endangered Species Act. Regional offices of the U.S. Fish and Wildlife Service have provided a list of species of particular concern. Projects should focus on these species. Principal investigators are encouraged to communicate directly with USFWS regional contacts before project submission.

or

2. Projects submitted should focus on providing critical habitat information and should demonstrate how study results will strongly support management and conservation applications. Projects that focus on multiple species of concern within the same critical habitat or ecosystem are especially encouraged. Multiple species might include both those having formal listed status with USFWS and those not formally listed. Research efforts should provide information needed by Federal agencies to meet requirements for recovery plan implementation, multi-species conservation plans, habitat reserve agreements, or other conservation-oriented plans.

In addition, projects funded in the FY 1998 cycle will be expected to focus in geographic areas of particular current importance to the DOI and its bureaus. Those areas of concern are: Arizona and New Mexico (in support of the Secretary's Southwestern Initiative); San Francisco Bay Delta (also a Secretarial initiative); southeastern aquatic habitats; California's Majave Desert and Central Valley; South Florida; Colorado plateau; and Hawaii.

This program is conducted in furtherance of the Secretary's obligations under the Fish and Wildlife Act of 1956 (16 USC 742a–742j, as amended) and the Fish and Wildlife Coordination Act (16 U.S.C. 661–667e, as amended).

### B. Background

The Biological Resources Division (BRD) of the U.S. Geological Survey gathers and analyzes biological information and services as an information clearinghouse, providing broad access to the widest possible range of factual data on the status and trends of the Nation's biota and the potential effects of land management choices. This information serves public and private landowners who are

interested in sustaining biological resources. It also provides understanding to help avoid conflicts that can both impede development and degrade natural habitats.

The Species at Risk Program will develop scientific information and alternatives to assist Federal, State, and other land managers in their decisions regarding the protection of sensitive species and habitats.

### C. Availability of Funds

Through this program, pre-proposals are invited for funding in Fiscal Year 1998. Total funding anticipated for the fiscal year is approximately $375,000. Monies will be provided to successful applicants on a competitive basis. There is no minimum project cost; the maximum project cost will be $80,000.

### D. Eligibility Requirements

Under the terms specified in the information package, pre-proposals will be accepted from State agencies, private and industry groups, academic institutions, and Native American Tribes and Nations. Pre-proposals will be evaluated in light of their scientific merit, partnership opportunities, potential for providing useful information to resource managers, potential for conservation agreements, possibilities for cost sharing, and demonstration of successful completion within 18 months of date of initiation. Possible selectees will then be invited to submit a full proposal for consideration of funding.

### E. Application Process

Parties interested in participating in this program should request an information package that will include detailed application forms, Federal Assistance Forms (Standard Form 424, etc), proposal format requirements, etc., from: Mail: Species at Risk Program, 12201 Sunrise Valley Drive, MS 300, Reston, VA 20192, ATTN: Dr. Nancy Milton, or E-Mail: nancy__m__milton@nbs.gov, or call: (703) 648–4074.

### F. Dates

Notice of interest in this program must be received by December 31, 1997.

**W. James Fleming,**

*Acting Chief Biologist, Biological Resources Division.*

[FR Doc. 97–32314 Filed 12–9–97; 8:45 am]

**BILLING CODE 4310–31–M**

## DEPARTMENT OF THE INTERIOR

## Bureau of Land Management

**[AZ–930–1430–01; AZA 13411, AZA 13431]**

## Public Land Order No. 7300; Revocation of Two Secretarial Orders Dated November 18, 1904, and April 26, 1916; Arizona

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Public land order.

**SUMMARY:** This order revokes, in their entirety, two Secretarial orders as they affect 5,922.44 acres of public lands withdrawn for the Bureau of Reclamation's Little Colorado Project. The project has not been developed and there is no further need for the lands to be withdrawn. The lands are closed to surface entry and mining and will not be opened at this time. The lands have been and will continue to be open to mineral leasing.

**EFFECTIVE DATE:** December 10, 1997.

**FOR FURTHER INFORMATION CONTACT:** Cliff Yardley, BLM Arizona State Office, 222 North Central Ave., Phoenix, Arizona 85004–2203, 602–417–9437.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. The Secretarial orders dated November 18, 1904, and April 26, 1916, which withdrew public lands for the Bureau of Reclamation's Little Colorado River Project, are hereby revoked in their entirety.The lands involved aggregate 5,922.44 acres in Coconino and Navajo Counties.

2. The lands will not be opened until an analysis is completed to determine if any of the lands need special designation and to identify any land exchange potential.

Dated: November 26, 1997.

**Bob Armstrong,**

*Assistant Secretary of the Interior.*

[FR Doc. 97–32318 Filed 12–9–97; 8:45 am]

**BILLING CODE 4310–32–P**

## DEPARTMENT OF THE INTERIOR

## Bureau of Land Management

**[OR–958–0777–63; GP7–0018; OR–19136]**

## Public Land Order No. 7301; Revocation of Secretarial Order Dated June 18, 1924; Oregon

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Public Land Order.

**SUMMARY:** This order revokes in its entirety a Secretarial order which withdrew 16,285 acres of National Forest System lands and 20 acres of public lands for the Bureau of Land Management's Powersite Classification No. 78. The lands are no longer needed for the purpose for which they were withdrawn. The lands will remain closed to surface entry and mining by other overlapping withdrawals, and a portion of the lands have been and will remain open to mineral leasing.

**EFFECTIVE DATE:** January 9, 1998.

**FOR FURTHER INFORMATION CONTACT:** Betty McCarthy, BLM Oregon/Washington State Office, P.O. Box 2965, Portland, Oregon 97208–2965, 503–952–6155.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. The Secretarial Order dated June 18, 1924, which established Powersite Classification No. 78, is hereby revoked in its entirety:

**Willamette Meridian**

*Public Lands*

T. 5 S., R. 49 E.,
Protraction block no. 45 (formerly identified as sec. 30).

Wallowa and Whitman National Forests

T. 5 N., R. 47 E., (unsurveyed),
Sec. 1, all unsurveyed lands lying within ¼ mile of the Snake River.
T. 4 N., R. 48 E.,
Sec. 2, lot 1;
Sec. 3, lots 3, 4, 5, and 6;
Sec. 11, lots 1, 2, 3, and 4;
Sec. 13, lot 1;
Sec. 14, lots 1, 2, 3, and 4.
T. 5 N., R. 48 E., (unsurveyed),
Secs. 6, 7, 18, 19, 20, 28, 29, 33, and 34, all unsurveyed lands lying within ¼ mile of the Snake River.
T. 4 N., R. 49 E.,
Sec. 16, lots 1 to 5, inclusive, and SE¼SW¼;
Sec. 17, lots 1, 2, 3, and 4;
Sec. 18, lot 3 and that portion of Mineral Survey No. 469 formerly known as lots 1, 2, and 3;
Sec. 19, lots 1 and 2;
Sec. 27, lots 1, 2, and 3, and SE¼NW¼;
Sec. 35, lots 1, 2, 3, and 4, SE¼NW¼, and NW¼SE¼.
T. 1 N., R. 50 E., (unsurveyed),
Secs. 24, 25, 26, 35, and 36, all unsurveyed lands lying within ¼ mile of the Snake River.
T. 2 N., R. 50 E.,
Sec. 1, lots 1 and 4;
Sec. 12, all lands lying within ¼ mile of the Snake River.
T. 3 N., R. 50 E.,
Sec. 4, lots 1, 2, 3, and 4;
Sec. 10, lot 2, SW¼NE¼, and NE¼SE¼;
Sec. 11, lots 1, 2, and 3, and S½SW¼;

Sec. 13, lot 1;
Sec. 14, lots 1, 2, and 3, SW¼NE¼, and SE¼SE¼;
Sec. 23, E½NE¼ and NE¼SE¼;
Sec. 24, lots 1, 2, 3, and 4;
Sec. 25, lots 1, 2, 3, and 4;
Sec. 26, E½E½.
T. 4 N., R. 50 E., (unsurveyed),
Secs. 31, 32, and 33, all unsurveyed lands lying within ¼ mile of the Snake River.
T. 1 N., R. 51 E., (unsurveyed),
Secs. 4, 5, 8, 17, 18, and 19, all unsurveyed lands lying within ¼ mile of the Snake River.
T. 2 N., R. 51 E.,
Secs. 7, 17, and 18, all unsurveyed lands lying within ¼ mile of the Snake River;
Sec. 20, lots 1, 2, 3, and 4, and NE¼SW¼;
Sec. 29, lot 3, and W½NW¼NE¼ (formerly known as lot 1);
Sec. 33, lots 1, 2, 3, and 4, and E½SW¼.
T. 2 S., R. 49 E., (unsurveyed),
Protraction block nos. 48, 49, and 52 (formerly identified as secs. 24, 25, and 35),
Secs. 26 and 36, all unsurveyed lands lying within ¼ mile of the Snake River.
T. 3 S., R. 49 E., (unsurveyed),
Secs. 2, 3, 10, 11, 14, 15, 22, 23, 26, 27, 33, and 34, all unsurveyed lands lying within ¼ mile of the Snake River.
T. 4 S., R. 49 E., (unsurveyed),
Protraction block nos. 37, 40, 41, 44, 45, and 48 (formerly identified as secs. 4, 9, 16, 21, 28, 29, and 32), all unsurveyed lands lying within ¼ mile of the Snake River.
T. 5 S., R. 49 E., (unsurveyed)
Protraction blocks nos. 37, 40 to 44, inclusive, (formerly identified as secs. 4, 8, 9, 17, 19, and 20), all unsurveyed lands lying within ¼ mile of the Snake River.
T. 1 S., R. 50 E., (unsurveyed),
Secs. 2, 3, 10, 11, 15, 21, 22, 28, and 33, all unsurveyed lands lying within ¼ mile of the Snake River.
T. 2 S., R. 50 E., (unsurveyed),
Secs. 4, 5, 7, 8, 18, and 19, all unsurveyed lands lying within ¼ mile of the Snake River.

The areas described aggregate approximately 16,305 acres in Wallowa County.

2. The public lands in T. 5 S., R. 49 E., is included in the Hells Canyon National Recreation Area and Power Project No. 1971, and will not be restored to operation of the public land laws, including the mining and mineral leasing laws.

3. The lands described in paragraph 1, except as provided by paragraph 2, are included in the Hells Canyon National Recreation Area, the Middle Snake Wild and Scenic River, and Power Project No. 1971, and will remain clod to such forms of disposition as may by law be made of National Forest System lands, including the mining laws. The lands lying outside the national recreation area and wild and scenic river boundaries have been and will remain open to applications and offers under the mineral leasing laws.

Dated: November 26, 1997.

**Bob Armstrong,**

*Assistant Secretary of the Interior.*

[FR Doc. 97–32317 Filed 12–9–97; 8:45 am]

BILLING CODE 4310–33–P

## INTERNATIONAL TRADE COMMISSION

### Agency Form Submitted for OMB Review

**AGENCY:** United States International Trade Commission.

**ACTION:** In accordance with the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Commission has submitted a request for approval of questionnaires to the Office of Management and Budget for review.

PURPOSE OF INFORMATION COLLECTION: The forms are for use by the Commission in connection with investigation No. 332–386, Macadamia Nuts: Economic and Competitive Conditions Affecting the U.S. Industry, instituted under the authority of section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)). This investigation was requested by Committee on Finance, U.S. Senate. The Commission expects to deliver the results of its investigation to the Committee on Finance by September 30, 1998.

**PROPOSAL:**

(1) Number of forms submitted: three
(2) Title of forms: Importer Questionnaire, Grower Questionnaire, and Grower/Processor Questionnaire
(3) Type of request: new
(4) Frequency of use: Importer, Grower, and Grower/Processor questionnaire, single data gathering, scheduled for February 1998
(5) Description of respondents: U.S. firms which produce, process, and or import macadamia nuts
(6) Estimated number of respondents:
100 (Grower questionnaire)
9 (Importer questionnaire)
6 (Grower/Processor questionnaire)
115 Total
(7) Estimated total number of hours to complete the forms: 4,510
(8) Information obtained from the form that qualifies as confidential business information will be so treated by the Commission and not disclosed in a manner that would reveal the individual operations of a firm

**ADDITIONAL INFORMATION OR COMMENT:** Copies of the forms and supporting documents may be obtained from Stephen Burket (USITC, telephone no. (202) 205–3318). Comments about the proposals should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Room 10102 (Docket Library), Washington, DC 20503, ATTENTION: Docket Librarian. All comments should be specific, indicating which part of the questionnaire is objectionable, describing the concern in detail, and including specific suggested revisions or language changes. Copies of any comments should be provided to Robert Rogowsky, Director, Office of Operations, U.S. International Trade Commission, 500 E Street S.W., Washington, D.C. 20436, who is the Commission's designated Senior Official under the Paperwork Reduction Act.

Hearing impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal (telephone no. 202–205–1810). General information concerning the Commission may also be obtained by accessing its Internet server (http://www.usitc.gov).

Issued: December 3, 1997.

By order of the Commission.

**Donna R. Koehnke,**

*Secretary.*

[FR Doc. 97–32334 Filed 12–9–97; 8:45 am]

BILLING CODE 7020–02–P

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 332–325]**

### The Economic Effects of Significant U.S. Import Restraints: Second Biennial Update

**AGENCY:** United States International Trade Commission.

**ACTION:** Notice of hearing and opportunity to submit written comments for biennial update report.

**EFFECTIVE DATE:** December 3, 1997.

**SUMMARY:** The Commission has scheduled a hearing in connection with the second biennial report in this investigation for May 12, 1998, and has established deadlines for the submission of requests to appear at the hearing and for the filing of written submissions as set forth below.

**FOR FURTHER INFORMATION CONTACT:** Michael Gallaway at (202) 205–3247, Office of Economics, U.S. International Trade Commission. Hearing impaired persons are advised that information on this investigation can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

**SUPPLEMENTARY INFORMATION:** In a letter dated May 15, 1992, the United States Trade Representative (USTR) requested that the United States International Trade Commission conduct an investigation assessing the quantitative economic effects of significant U.S. import restraint programs operating in the U.S. economy. The request also asked the Commission to prepare reports updating the analysis, with delivery of those reports to be made on 2-year intervals following the submission of the first report. The first report was delivered to the USTR in November 1993 and the first update was transmitted in December 1995. A letter from USTR sent March 10, 1997 requested that the second update be delayed to February 1999 to allow the analysis to incorporate important information due to be released very near the previously scheduled December 1997 due date.

In this second biennial update report, the Commission will, as was done in the first two reports, assess the economic effects of significant U.S. import restraints on U.S. consumers, on the activities of U.S. firms, on the income and employment of U.S. workers, and on the net economic welfare of the United States. The investigation will not include import restraints resulting from final antidumping or countervailing duty investigations, section 337 or 406 investigations, or section 301 actions.

The initial notice of institution of this investigation was published in the **Federal Register** of June 17, 1992 (57 FR 27063).

**PUBLIC HEARING:** A public hearing in connection with this investigation will be held on May 12, 1998, beginning at 9:30 a.m. It will be held in the Commission's hearing room at 500 E Street, SW., Washington, D.C. 20436. All persons will have the right to appear by counsel or in person to present information and to be heard. Requests to appear at the public hearing should be filed with the Secretary, United States International Trade Commission, 500 E Street, SW., Washington, D.C., not later than the close of business, 5:15 p.m., on May 5, 1998. Hearing statements should be filed not later than May 8, 1998. Any posthearing submissions must be filed not later than COB June 12, 1998. In the event that, as of the close of business on May 5, 1998, no witnesses are scheduled to appear at the hearing, the hearing will be canceled. Any person interested in attending the hearing as an observer or non-participant may call the Secretary to the Commission (202–205–1816) after May 7, 1998, to determine whether the hearing will be held.

**WRITTEN SUBMISSIONS:** Interested persons are invited to submit written statements concerning the matters to be addressed in the report. Commercial or financial information that a party desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked ''Confidential Business Information'' at the top. (Generally, submission of separate confidential and public versions of the submission would be appropriate.) All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be made available in the Office of the Secretary to the Commission for inspection by interested persons. To be assured of consideration, written submissions must be filed by June 12, 1998.

Issued: December 4, 1997.

By order of the Commission.

**Donna R. Koehnke,**

*Secretary.*

[FR Doc. 97–32336 Filed 12–9–97; 8:45 am]

**BILLING CODE 7020–02–P**

## INTERNATIONAL TRADE COMMISSION

**[Inv. No. 337–TA–383]**

## Certain Hardware Logic Emulation Systems and Components Thereof; Notice of Issuance of a Permanent Limited Exclusion Order and a Permanent Cease and Desist Order

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the Commission has issued a permanent limited exclusion order and a permanent cease and desist order in the above-captioned investigation.

**FOR FURTHER INFORMATION CONTACT:** Jay H. Reiziss, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–205–3116. General information concerning the Commission may also be obtained by accessing the Commission's Internet server (http://www.usitc.gov or ftp://ftp.usitc.gov).

**SUPPLEMENTARY INFORMATION:** This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, and Commission rule 210.50, 19 CFR 210.50.

This investigation and temporary relief proceedings were instituted on March 8, 1996, based upon a complaint and motion for temporary relief filed on January 26, 1996, by Quickturn Design Systems, Inc (''Quickturn''). The respondents are Mentor Graphics Corporation (''Mentor'') of Wilsonville, Oregon and Meta Systems (''Meta'') of Saclay, France (collectively ''respondents''). Meta is a wholly owned subsidiary of Mentor. The products at issue are hardware logic emulation systems, subassemblies thereof, and components thereof, including hardware logic emulation software, that are used in the semiconductor manufacturing industry to design and test the electronic circuits of semiconductor devices.

After an 11-day evidentiary hearing in April–May 1996, the presiding administrative law judge (''ALJ'') issued an initial determination (''ID'') granting complainant Quickturn's motion for temporary relief. On August 5, 1996, the Commission determined not to modify or vacate the ID and issued a temporary limited exclusion order against Mentor and Meta and a temporary cease and desist order against Mentor, and determined that the amount of respondents' bond during the pendency of temporary relief should be forty-three (43) percent of the entered value of imported hardware logic emulation systems and components thereof.

After a 14-day evidentiary hearing and two days of closing arguments, the ALJ, on July 31, 1997, issued a final ID finding that respondents had violated section 337 by infringing claims of all five of Quickturn's asserted patents. On that same date, the ALJ issued a recommended determination (''RD'') recommending the issuance of a permanent exclusion order and a cease and desist order. On October 2, 1997, the Commission issued its notice of the decision not to review the ALJ's final ID, thereby finding that respondents are in violation of section 337. The Commission also requested briefs on the issues of remedy, the public interest, and bonding. On October 16, 1997, Quickturn, respondents, and the Commission investigative attorneys submitted comments on those issues, and on October 23, 1997, all parties submitted reply comments.

The Commission, having determined that a violation of section 337 has occurred in the importation, sale for importation, or sale in the United States of the accused hardware logic emulation systems and components thereof, including software, considered the issues of the appropriate form of such relief, whether the public interest precludes issuance of such relief, and respondents' bond during the 60-day Presidential review period.

The Commission determined that a permanent limited exclusion order and a permanent cease and desist order directed to domestic respondent Mentor are the appropriate form of relief. The Commission further determined that the statutory public interest factors do not preclude the issuance of such relief, and that respondents' bond under the permanent limited exclusion order and the permanent cease and desist order shall be in the amount of 43 percent of the entered value of the imported articles if the entered value is based on transaction value as defined by the U.S. Customs Service, and 180 percent of the entered value of such articles if the entered value is based on other than transaction value.

Copies of all nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, D.C. 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

Issued: December 3, 1997.

By order of the Commission.

**Donna R. Koehnke,**

*Secretary.*

[FR Doc. 97–32335 Filed 12–9–97; 8:45 am]

**BILLING CODE 7020–02–P**

## DEPARTMENT OF JUSTICE

### President's Advisory Board on Race

**ACTION:** President's Advisory Board on Race; notice of meeting.

**SUMMARY:** The President's Advisory Board on Race will meet on December 17, 1997, in Fairfax County, Virginia at a site to be determined. The meeting will start at approximately 9:00 a.m. and end at approximately 3:30 p.m. The agenda will include a discussion of the experiences and challenges in primary and secondary education for students of different races and of programs that are addressing some of those challenges.

The meeting will be open to the public on a first-come, first-seated basis. Interested persons are encouraged to attend. Members of the public may submit to the contact person, any time before or after the meeting, written statements to the Board. Written comments may be submitted by mail, telegram, or facsimile, and should contain the writer's name, address and commercial, government, or organizational affiliation, if any.

**FOR FURTHER INFORMATION:** Contact our main office number, (202) 395–1010, for the exact location of the meeting. Other comments or questions regarding this meeting may be directed to Randy Ayers, (202) 395–1010, or via facsimile, (202) 395–1020.

Dated: December 5, 1997.

**Robert Wexler,**

*General Counsel.*

[FR Doc. 97–32364 Filed 12–9–97; 8:45 am]

**BILLING CODE 4410–AR–M**

## DEPARTMENT OF LABOR

### Office of the Secretary

### Submission for OMB Review; Comment Request

December 5, 1997.

The Department of Labor (DOL) has submitted the following public information collection requests (ICR's) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor, Departmental Clearance Officer, Todd R. Owen ((202) 219–5096 ext. 143) or by E-Mail to Owen-Todd@dol.gov. Individuals who use a telecommunication device for the deaf (TTY/TDD) may call (202) 219–4720 between 1:00 p.m. and 4:00 p.m. Eastern Time, Monday–Friday.

Comments should be sent to the Office of Information and Regulatory Affairs, Attn: BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), on or before January 9, 1998.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

*Agency:* Employment and Training Administration.

*Title:* Job Training Partnership Act (JTPA) Annual Service Delivery Area Report.

*OMB Number:* 1205–0341 (reinstatement without change).

*Frequency:* Annually.

*Affected Public:* State, Local or Tribal Government.

*Number of Respondents:* 59.

*Estimated Time Per Respondent:* 1 hour.

*Total Burden Hours:* 59.

*Total annualized capital/startup costs:* 0.

*Total annual costs:* 0.

*Description:* The requested information will be used to assess JTPA local financial participant data. Participant and financial data will be used to respond to Congressional oversight, to prepare budget requests, and make annual reports to Congress per statute.

*Agency:* Occupational Safety and Health Administration.

*Title:* Asbestos in General Industry (29 Part 1910.1001).

*OMB Number:* 1218–0133 (extension).

*Frequency:* On occasion.

*Affected Public:* Business and other for-profit, Federal and State government, Local or Tribal governments.

*Number of Respondents:* 233.

*Estimated Time Per Respondent:* Time per response ranges from 5 minutes to maintain records to 1.5 hour for employees to receive a medical exam.

*Total Burden Hours:* 43,197.

*Total annualized capital/startup costs:* 0.

*Total annual costs:* $1,625,143.

*Description:* The purpose of the Asbestos in General Industry Standard and its information collection requirements are designed to provide protection from the adverse health effects associated with occupational exposure to asbestos. The standard requires employers to monitor employee exposure to asbestos, to monitor employee health and to provide employees with information about their exposures and health effects from exposure to asbestos.

*Agency:* Occupational Safety and Health Administration.

*Title:* OSHA Data collection System.

*OMB Number:* 1218–0209 (extension).

*Frequency:* Annually.

*Affected Public:* Business and other for-profit, State government, Local or Tribal governments.

*Number of Respondents:* 80,000.

*Estimated Time Per Respondent:* 30 minutes.

*Total Burden Hours:* 35,000.

*Total annualized capital/startup costs:* 0.

*Total annual costs:* 0.

*Description:* The 1988 OSHA Data Collection will request 1997 injury and illness data from 80,000 establishments throughout the Nation. The data are needed by OSHA to carry out intervention and enforcement activities to guarantee workers a safe and healthful workplace. The data will also be used for measurement purposes in compliance with the Government Performance and Results Act of 1995 and multiple research purposes. The data collected are already maintained by employers as required by 29 CFR part 1904.

**Todd R. Owen,**

*Departmental Clearance Officer.*

[FR Doc. 97–32307 Filed 12–9–97; 8:45 am]

BILLING CODE 4510–30–M

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 211(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Acting Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Acting Director, Office of Trade Adjustment Assistance, at the address show below, not later than December 22, 1997.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Acting Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 22, 1997.

The petitions filed in this case are available for inspection at the Office of the Acting Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 17th day of November, 1997.

**Grant D. Beale,**

*Acting Director, Office of Trade Adjustment Assistance.*

APPENDIX—PETITIONS INSTITUTED ON 11/17/97

| TA–W | Subject firm (petitioners) | Location | Date of petition | Product(s) |
|---|---|---|---|---|
| 33,997 | Century Mfg Co (Comp) | Pierre, SD | 11/03/97 | Battery Chargers. |
| 33,998 | American Standard Apparel (Wkrs) | Williamsport, PA | 11/03/97 | Sew Knit Tops & Sweatshirts. |
| 33,999 | American Tissue Mills (Wkrs) | Tomahawk, WI | 10/31/97 | Single & Double Ply Napkin, Toweling. |
| 34,000 | Flexsys America L.P. (Wkrs) | Nitro, WV | 10/28/97 | Rubber Chemicals. |
| 34,001 | Warren Petroleum (Comp) | Santana, KS | 10/27/97 | Natural Gas. |
| 34,002 | Maine Traditional Stitch (Wkrs) | Lewiston, ME | 11/01/97 | Shoe Stitching. |
| 34,003 | Umbro NA (Comp) | Fairbluff, NC | 10/28/97 | Nylon Soccer Shorts. |
| 34,004 | MAPA Pioneer (USWA) | Willard, OH | 11/01/97 | Latex Rubber Gloves. |
| 34,005 | Genesco, Inc, Tishomingo (Comp) | Luka, MS | 10/28/97 | Western Footwear. |
| 34,006 | Pacific Lumber & Shipping (UBC) | Seattle, WA | 11/05/97 | Soft Wood Dimension Lumber. |
| 34,007 | International Watchmakers (Comp) | Mission Viejo, CA | 11/04/97 | Watch Parts. |
| 34,008 | J & L Specialty Steel (USWA) | Detroit, MI | 11/03/97 | Flat Rolled Stainless Steel. |
| 34,009 | Morganton Dyeing (Wkrs) | Morganton, NC | 10/31/97 | Dye & Finish Ladies' Apparel Fabrics. |
| 34,010 | Parker Hannifin Co | Berea, Ky | 10/20/97 | O-Rings. |
| 34,011 | SRAM Corp (Wkrs) | Elk Grove Vill., IL | 11/04/97 | Shifters & Brakes for Mountain Bike's. |
| 34,012 | Carrier-Global (Wkrs) | Syracuse, NY | 11/05/97 | Engineering Drawings. |
| 34,013 | Alcatel Telecommunication (Wkrs) | Roanoke, VA | 10/23/97 | Fiber optics. |
| 34,014 | Dee's Mfg, Inc (Comp) | El Paso, TX | 11/06/97 | Ladies' Jeans. |
| 34,015 | Green Veneer, Inc (Wrks) | Mill City, Or | 11/05/97 | Green Veneer for Plywood. |
| 34,016 | Paradox Fabrics, Inc (Comp) | New York, NY | 11/04/97 | Fabrics for Ladies' Dresses. |

[FR Doc. 97–32295 Filed 12–9–97; 8:45 am]

BILLING CODE 4510–30–M

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–33,727]**

### CMS NOMECO Oil and Gas Company, Jackson, Michigan; Notice of Negative Determination Regarding Application for Reconsideration

On August 29, 1997, the Department issued a Negative Determination Regarding Eligibility to apply for worker adjustment assistance, applicable to workers and former workers of CMS NOMECO Oil and Gas Company of Jackson, Michigan. The notice was published in the **Federal Register** on September 30, 1997 (62 FR 51152).

By letter of September 24, 1997, the petitioners requested administrative reconsideration regarding the Department's denial. New information provided by CMS NOMECO Oil and Gas

Company shows that company sales declined during the time period relevant to the investigation.

Workers at the subject firm are engaged in employment related to the exploration and production of crude oil and natural gas. The workers are not separately identifiable by product line.

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) if it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) if in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The request for reconsideration claims that U.S. sales decreased as a result of imports during the relevant time period and, thus the company made a strategic business decision to relocate to Houston, Texas in order to pursue foreign production of oil and gas which resulted in workers being dislocated in Jackson, Michigan.

In order for the Department to issue a worker group certification, all of the group eligibility requirements of Section 222 of the Trade Act must be met. Review of the investigation findings show that criterion (3) was not met.

Revised data from the subject firm does indicate a minor decline in domestic sales. However, notwithstanding these minor declines in domestic sales, the separations resulted from a corporate decision to transfer corporate headquarters within the U.S.

**Conclusion**

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, D.C. this 2nd day of December 1997.

**Grant D. Beale,**

*Acting Director, Office of Trade Adjustment Assistance.*

[FR Doc. 97–32304 Filed 12–9–97; 8:45 am]

BILLING CODE 4510–30–M

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–32,179, et al.]**

### Dallco Industries, Incorporated, Hustontown, Pennsylvania, Headquarters and Production Facility, York, Pennsylvania Production Facility, Adams County, Pennsylvania, Catz Division, New York, New York; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on May 22, 1996, applicable to all workers of Dallco Industries, Incorporated, Houstontown, Pennsylvania, Headquarters and production Facility, York, Pennsylvania and Production Facility, Adams County, Pennsylvania. The notice was published in the **Federal Register** on June 6, 1996 (61 FR 28900).

At the request of the petitioners, the Department reviewed the certification for workers of the subject firm. The workers are engaged in employment related to the production of ladies' loungewear, sleepwear, sportswear and children's clothing. New information received by the company shows that worker separations occurred at the Catz Division, New York, New York location of Dallco Industries, Incorporated when it closed in August, 1997. The New York, New York location served as a showroom with designing and sales for the headquarters and production facilities located throughout Pennsylvania.

The intent of the Department's certification is to include all workers of Dallco Industries, Incorporated who were adversely affected by increased imports. Accordingly, the Department is amending the certification to cover the workers of Dallco Industries, Incorporated, Catz Division, New York, New York.

The amended notice applicable to TA–W–32,179 is hereby issued as follows:

''All workers of Dallco Industries, Incorporated located at the production facility in Hustontown, Pennsylvania (TA–W–32,179), headquarters and production facility in York, Pennsylvania (TA–W–32,179A), production facility in Adams County, Pennsylvania (TA–W–32,179B), Catz Division, New York, New York (TA–W–32,179C) who became totally or partially separated from employment on or after March 12, 1995 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.''

Signed at Washington, D.C. this 28th day of November 1997.

**Grant D. Beale,**

*Acting Director, Office of Trade Adjustment.*

[FR Doc. 97–32302 Filed 12–9–97; 8:45 am]

BILLING CODE 4510–30–M

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–33,759]**

### Dyna-Craft Industries, Incorporated, Murrysville, Pennsylvania; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Acting Director of the Office of Trade Adjustment Assistance for workers at Dyna-Craft Industries, Incorporated, Murrysville, Pennsylvania. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–33,759; Dyna-Craft Industries, Incorporated
Murrysville, Pennsylvania (November 20, 1997)

Signed at Washington, D.C. this 21st day of November, 1997.

**Grant D. Beale,**

*Acting Director, Office of Trade Adjustment Assistance.*

[FR Doc. 97–32296 Filed 12–9–97; 8:45 am]

BILLING CODE 4510–30–M

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of November, 1997.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) that a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) that sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) that increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

**Negative Determinations for Worker Adjustment Assistance**

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

*TA–W–33,759; Dyna-Craft Industries, Inc., Murrysville, PA*

*TA–W–33,810; Lenzing Fibers Corp., Lowland, TN*

*TA–W–33,807; Superior Farms, Inc., Ellensburg, WA*

*TA–W–33,823; Princeton Carpets, Adairsville, GA*

*TA–W–33,905; Loralie Originals, Inc., Redding, CA*

*TA–W–33,668; Maxus Energy Corp., Dallas, TX & Operating at The Following Locations; A; Midgard Energy Co., Amarillo, TX B; Midgard Energy Co., Canadian, TX, C; Midgard Energy Co (Dumas), Sunray, TX, D; Chemical Land Holding, Inc., Kearny, NJ, E; Midgard Energy Co, Pampa, TX, F; Midgard Energy Co., Perryton, TX, G; Midgard Energy Co., Roger Mill Plant, Leedy, OK, H; Midgard Energy Co., Spearman, TX, I; Midgard Energy Co., Sunray Gas Plant, Sunray, TX*

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

*TA–W–33,963; Lenworth-Aminco, Inc., A Division of Lenworth Metal Products Ltd., Meadville, PA*

*TA–W–33,805; Marsey Lace, Guttenburg, NJ*

The workers firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

*TA–W–33,860; Pride Manufacturing Co., Guilford, ME*

The investigation revealed that criteria (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

*TA–W–33,787; Stanley Hardware, New Britian, CT*

The predominant cause of worker separations at the subject firm was caused by a transfer of production to other domestic locations.

*TA–W–33,773; Banner Pharmacaps, Elizabeth, NJ*

*TA–W–33,897; Beliot Corp., Beloit Pulpins Group, Dalton, MA*

*TA–W–33,775; CTS Corp., Baldwin, WI*

*TA–W–33,990; Extex, Inc., St. Elmo, IL*

Increased imports did not contribute importantly to worker separations at the firm.

**Affirmative Determinations for Worker Adjustment Assistance**

The following certifications have been issued; the date following the company name & location for each determination references the impact date for all workers for such determination.

*TA–W–33,669; Kimberly-Clark Corp., Marinette, WI: July 4, 1996*

*TA–W–33,943; Carolyn of Virginia, Inc., Bristol, VA: September 15, 1996*

*TA–W–33,731; Trina, Inc., Fall River, MA: July 31, 1996*

*TA–W–33,607; Letarte Co., Inc., d/b/a L.C. Holdings, Inc., Smith Creek, MI: June 17, 1996*

*TA–W–33,930; Frolic Footwear, Walnut Ridge, AR: September 29, 1996*

*TA–W–33,752; Clark Metal Products Co., Marion, OH: August 8, 1996*

*TA–W–33,834; Jonbil, Inc., Chase City, VA: September 2, 1996*

*TA–W–33,891; MCD International, LLC, Anniston, AL: September 22, 1996*

*TA–W–33,927; Oneita Industries, Inc., Fayette Apparel Plant, Fayette, AL: October 7, 1996*

*TA–W–33,862; Great American Products, Inc., Broodview, IL: September 11, 1996*

*TA–W–33,859; This & That, Inc., Elizabethville, PA: September 8, 1996*

*TA–W–33,884; Manhattan Shirt Co., A Division of Salant Corp., Andalusia, AL 1996*

*TA–W–33,883; Fleetwood Metals Industries, Tecumseh, MI: September 25, 1996*

*TA–W–33,848; CPC International, Inc., Best Foods Div., Jersey City, NJ: July 29, 1996*

*TA–W–33,841; M. Fine & Sons Manufacturing Co., Bedford, IN, September 15, 1996*

*TA–W–33,861; Posey Manufacturing Co., Inc., Hoquiam, WA: September 2, 1996*

*TA–W–33,928; Grainger Knitwear Co., Rutledge, TN: October 8, 1996*

*TA–W–33,756; Gurney Industries, Inc., Apparel Div., Plattville, AL August 9, 1996*

*TA–W–33,853; Ponderosa Manufacturing Co., A Subsidiary of Franklin Peck Industries, Chattanooga, TN: September 4, 1996*

*TA–W–33,761; CNG Transmission Corp., Clarksburg, WV & Operating in the Following States: A; NY, B; OH, C; PA, D; TX, E; VA, F; WV: September 26, 1997*

*TA–W–33,925; Apparel Brands, Inc., Wrightsville, GA: October 8, 1996*

*TA–W–33,920; Tarrytown Garment, Tarrytown, NY: October 8, 1996*

*TA–W–33,776 & A; Appalachian Finishing Works, Knoxville, TN and Southbound Connections, Inc., Maynardville, TN: August 18, 1996*

*TA–W–33,851 & A; Condere Corp. d/b/a Fidelity Tire Manufacturing Co., Natchez, MS and Condere Corp., Hamden, CT: September 17, 1996*

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (P.L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with Section 250(a) Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the month of November, 1997.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of Section 250 of the Trade Act must be met:

(1) that a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(2) that sales or production, or both, of such firm or subdivision have decreased absolutely,

(3) that imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increases in imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) that there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

**Negative Determinations NAFTA–TAA**

In each of the following cases the investigation revealed that criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers' separations. There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

*NAFTA–TAA–01878; Pennsylvania Technologies, Steeltown, PA*

*NAFTA–TAA–01751; Paul Miller, J.M. Harvesting, Belle Glade, FL*

*NAFTA–TAA–01960; Loralie Originals, Inc., Redding, CA*

*NAFTA–TAA–01888A; Southbound Connections, Inc., Maynardville, TN*

*NAFTA–TAA–01986; Bose Corp., Westboro, MA*

*NAFTA–TAA–01699; Pro-Line Cap Co., Bowie, TX*

*NAFTA–TAA–01931; The Stanley Works, Stanley Tools Division, York, PA*

*NAFTA–TAA–01999; Pacific Refining Co., Hercules, CA*

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

*NAFTA–TAA–01995; Lenworth-Aminco, Inc., A Div. of Lenworth Metal Products, Ltd., Meadville, PA*

*NAFTA–TAA–01941; F.W. Woolworth, Berwyn, IL*

The investigation revealed that the workers of the subject firm did not produce an article within the meaning of Section 250(a) of the Trade Act, as amended.

**Affirmative Determinations NAFTA–TAA**

The following certifications have been issued; the date following the company name and location for each determination references the impact date for all workers for such determination.

*NAFTA–TAA–01888; Appalachian Finishing Works, (Plants 1 & 2), Knoxville, TN: August 18, 1996.*

*NAFTA–TAA–01944; Fleetwood Metals Industries, Tecumseh, MI: September 30, 1996.*

*NAFTA–TAA–01769; Gargiulo Packing House, Immokalee, FL: May 7, 1996.*

*NAFTA–TAA–01954 & A; Taylor Togs, Inc., Micaville, NC and Green Mountain, NC: October 2, 1996.*

*NAFTA–TAA–01936 & A; Ace Metal Fabricators, Inc., Bronx, NY and Ace Sprayfinishing Corp., Bronx, NY: September 22, 1996.*

*NAFTA–TAA–01778; Letarte Co., Inc., d/b/a L.C. Holding, Inc., Smiths Creek, MI: June 20, 1996.*

*NAFTA–TAA–01943; Graham Chemical Co., Div. of IDE Interstate, Inc., Jamaica, NY: September 30, 1996.*

*NAFTA–TAA–01978; Bonita Packing Co., Bonita Springs, FL: October 15, 1996.*

*NAFTA–TAA–01951; Wolverine World Wide, HY-Test, Inc., Kirksville, MO: September 25, 1996.*

*NAFTA–TAA–01963; Apparel Brands, Inc., Wrightsville, GA: October 10, 1996.*

*NAFTA–TAA–01985; Cornelius Farms, Inc., Florida City, FL: August 28, 1996.*

*NAFTA–TAA–01887 A; Reeves Brothers, Inc., Chesnee, SC and Bishopville, SC: August 14, 1996.*

*NAFTA–TAA–01972; Fedco Automotive Components Co., Inc., Div. of Stant Corp., Buffalo, NY: October 9, 1996.*

*NAFTA–TAA–01984; Veratec, A Div. of International Paper Co., Lewisburg, PA: October 10, 1996.*

*NAFTA–TAA–01798; O & H Manufacturing Co., Inc., Allentown, PA: June 30, 1996.*

*NAFTA–TAA–01961; DQ Investment Corp d/b/a/ Accudat, Data Entry Operations, San Diego, CA: September 30, 1996.*

I hereby certify that the aforementioned determinations were issued during the month of November, 1997. Copies of these determinations are available for inspection in Room C–4318, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: November 20, 1997.

**Grant D. Beale,**

*Acting Director, Office of Trade Adjustment Assistance.*

[FR Doc. 97–32297 Filed 12–9–97; 8:45 am]

BILLING CODE 4510–30–M

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–33,050 and 050H]**

### Ithaca Industries, Incorporated, Thomasville, Georgia, Ithaca Industries, Incorporated, Quitman, Georgia; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on February 14, 1997, applicable to all workers of Ithaca Industries, Inc., Thomasville, Georgia. The notice was published in the **Federal Register** on April 29, 1997 (62 23273).

At the request of a company official, the Department reviewed the certification for workers of the subject firm. New information shows that worker separations will occur at the subject firms' Quitman, Georgia facility when it closes in December, 1997. Workers at the Quitman, Georgia facility are engaged in the production of men's and boys' undergarments. Based on these new findings, the Department is amending the certification to cover workers at the Quitman, Georgia facility.

The intent of the Department's certification is to include all workers of Ithaca Industries, Inc. adversely affected by increased imports.

The amended notice applicable to TA–W–33,050 is hereby issued as follows:

''All workers of Ithaca Industries, Inc., Thomasville, Georgia (TA–W–33,050), and Quitman, Georgia (TA–W–33,050H) who became totally or partially separated from employment on or after December 4, 1995 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.''

Signed at Washington, D.C. this 1st day of December, 1997.

**Grant D. Beale,**

*Acting Director, Office of Trade Adjustment Assistance.*

[FR Doc. 97–32306 Filed 12–9–97; 8:45 am]

BILLING CODE 4510–30–M

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–33, 936; TA–W–33, 936A]**

### Jennmar Corp. of Tennessee and Marjenn Trucking of Tennessee, Knoxville, Tennessee; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on October 27, 1997 in response to a worker petition which was filed on October 27, 1997 on behalf of workers at Jennmar Corp. of Tennessee and Marjenn Trucking of Tennessee, Knoxville, Tennessee.

The petitioners have requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, D.C. this 25th day of November, 1997.

**Grant D. Beale,**

*Acting Director, Office of Trade Adjustment Assistance.*

[FR Doc. 97–32294 Filed 12–9–97; 8:45 am]

BILLING CODE 4510–30–M

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Investigations Regarding Certifications of Eligibility to Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act) and are identified in the Appendix to this notice. Upon receipt of these petitions, the Acting Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Acting Director, Office of the Trade Adjustment Assistance, at the address show below, not later than December 22, 1997.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Acting Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 22, 1997.

The petitions filed in this case are available for inspection at the Office of the Acting Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 24th day of November, 1997.

**Grant D. Beale,**

*Acting Director, Office of Trade Adjustment Assistance.*

APPENDIX

[Petitions instituted on 11/24/97]

| TA–W | Subject firm (petitioners) | Location | Date of petition | Products(s) |
|---|---|---|---|---|
| 34,017 ..... | Marathon Electric (Wkrs) ..... | York, PA ..... | 11/01/97 | Generators. |
| 34,018 ..... | Aluminum Conductor Prod. (USWA) ..... | Vancouver, WA ..... | 11/10/97 | Aluminum Conductor Cable. |
| 34,019 ..... | Signal Apparel Co., Inc (Co.) ..... | New Tazewell, TN ..... | 11/14/97 | Ladies' & Men's T-Shirts, Pants. |
| 34,020 ..... | San Antonio Garment (Co.) ..... | San Antonio, TX ..... | 11/07/97 | Finishers of Levi Docker for Men. |
| 34,021 ..... | Bosch Braking Systems (UAW) ..... | Johnson City, TN ..... | 11/07/97 | Truck & Automobile Brake Drums & Rotors. |
| 34,022 ..... | National Seating Co (Wkrs) ..... | Horse Cave, KY ..... | 11/07/97 | Cushion-Aire Truck Seats. |
| 34,023 ..... | Spencer's Inc. (Wkrs) ..... | Hillsville, VA ..... | 11/07/97 | Infants and Children's Wear. |
| 34,024 ..... | Columbia Footwear Corp (UFCW) ..... | Hazleton, PA ..... | 11/05/97 | Casual Shoes & Boots. |
| 34,025 ..... | Carter Footwear, Inc. (UFCW) ..... | Wilkes-Barre, PA ..... | 11/05/97 | Canvas & Rubber Casual Footwear. |
| 34,026 ..... | Lukens Steel, Inc (USWA) ..... | Washington, PA ..... | 11/06/97 | Stainless Steel Products. |
| 34,027 ..... | Stanley Bostitch (Wkrs) ..... | N. Kingstown, RI ..... | 11/10/97 | Galvanized Nails. |
| 34,028 ..... | Gentex LLC (Wkrs) ..... | Rocky Mount, NC ..... | 11/11/97 | Printing of Fabrics for Apparel. |
| 34,029 ..... | Louisiana Pacific (Co.) ..... | Hayder Lake, ID ..... | 11/11/97 | Various Lumber Products. |
| 34,030 ..... | Cone Mills (UNITE) ..... | Haw River, NC ..... | 10/23/97 | Chamois Shirting, Flannel Shirting. |
| 34,031 ..... | MKE Quantum Components (Co.) ..... | Shrewsbury, MA ..... | 11/14/97 | Components for Disc Drives. |

[FR Doc. 97–32300 Filed 12–9–97; 8:45 am]

BILLING CODE 4510–30–M

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–33,767 and 767F]**

### Fruit of the Loom; Martin Mills, Inc. D/B/A St. Martinville Mills Including former Employees of Jeanerette Mills St. Martinville, Louisiana and Jeanerette Mills Division of Martin Mills, Inc. Jeanerette, Louisiana; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Notice of Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on August 29, 1997, applicable to workers of Fruit of the Loom, Martin Mills, Inc., located in St. Martinville, Louisiana. The notice was published in the **Federal Register** on September 30, 1997 (62 FR 51152). The certification was amended on September 14, 1997, to specify that Martin Mills, Inc., is doing business in St. Martinville, Louisiana as St. Martinville Mills, and to include those workers of the subject firm whose wages were reported under the separate Unemployment Insurance tax account for Jeanerette Mills. The notice of amended certification was published in the **Federal Register** on September 30, 1997 (62 FR 51155).

At the request of the company, the Department reviewed the certification for workers of the subject firm. The company reports that worker separations will occur at the Jeanerette Mills, Division of Martin Mills in Jeanerette, Louisiana. The workers are engaged in employment related to the production of T-shirts, briefs, and A-shirts.

The intent of the Department's certification is to include all workers of Fruit of the Loom adversely affected by increased imports of underwear.

The amended notice applicable to TA–W–33,767 is hereby issued as follows:

''All workers of Fruit of the Loom, Martin Mills, Inc., doing business at St. Martinville Mills, including former employees of Jeanerette Mills, St. Martinville, Louisiana (TA–W–33,767) and Jeanerette Mills, Division of Martin Mills, Inc., Jeanerette, Louisiana (TA–W–33,767F), who became totally or partially separated from employment on or after August 14, 1996, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.''

Signed in Washington, D.C. this 1st day of December 1997.

**Grant D. Beale,**

*Acting Director, Office of Trade Adjustment Assistance.*

[FR Doc. 97–32298 Filed 12–9–97; 8:45 am]

**BILLING CODE 4510–30–M**

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Notice of Determinations Regarding Eligibility to Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of November, 1997.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

#### Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

*TA–W–33,797; SMS Textile Mills, Allentown, PA*

*TA–W–33,893; Simpson Industries, Jackson, MI*

*TA–W–33,815; Amity Dyeing & Finishing, Augusta, GA*

*TA–W–33,982; Gary Peterson Logging, Inc., Cascade, ID*

*TA–W–33,923; Timberline Lumber, Inc., Kalispell, MT*

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

*TA–W–33,933; University Technical Service, Inc., San Diego, CA*

*TA–W–33,879; Cygne Design, Inc., New York, NY*

The workers firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

*TA–W–33,890; Wolverine World Wide Hy-Test, Inc., Kirksville, MO*

*TA–W–33,909; Redco Foods, Inc., Little Falls, NY*

*TA–W–33,840; Energizer Power Systems, Gainesville, FL*

The investigation revealed that criteria (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

*TA–W–33,675; J.G. Furniture Group, Inc., Quakertown, PA*

The predominant cause of worker separations at the subject firm was caused by a transfer of production to other another existing domestic company facility.

*TA–W–33,826; Chevron Fox Oil Team*

*TA–W–34,006; Packwood Lumber Co, A Subsidiary of Pacific Lumber and Shipping, Packwood, WA*

*TA–W–33,833; University Technical Service, Inc., San Diego, CA*

*TA–W–33,863; Batesville Casket Co., Campbellsville, KY*

*TA–W–33,573; The Bethlehem Corp., Easton, PA*

*TA–W–33,917; International Paper Co., Erie Mill, Erie, PA*

Increased imports did not contribute importantly to worker separations at the firm.

*TA–W–33,739; Tsumura International, A Subsidiary of Tsumura & Co., North Bergen, NJ*

The subject company made a decision to sell a part of the business and to consolidate the functions of two leased facilities in New Jersey into an owned facility in Minnesota.

*TA–W–33,952; Amesbury Group, Inc., Amesbury, MA*

The investigation revealed that criteria (2) and criteria (3) have not been met. Sales or production did not decline during the relevant period as required for certification. Increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have not contributed importantly to the separations or threat thereof, and the absolute decline in sale or production.

#### Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name & location for each determination references the impact date for all workers for such determination.

*TA–W–33,872; Franklin Furniture Corp., Greeneville, TN: September 22, 1996.*

*TA–W–33,899; Gandalf Systems Corp., Delran, NJ: September 26, 1996.*

*TA–W–33,657; O & H Manufacturing Co., Inc., Allentown, PA: June 30, 1996.*

*TA–W–33,956; Veratec, A Division of International Paper Co., Lewisburg, PA; October 10, 1996.*

*TA–W–33,960 & A; Wilhold, Sunbury, PA and Distribution Center, Milton, PA: October 20, 1996.*

*TA–W–33,915; DO Investment Corp., d/b/a Accudate Data Entry Operations, San Diego, CA: September 30, 1996.*

*TA–W–33,938 & TA–W–33,939; Lees Manufacturing Co., Cannon Falls, MN and KD Industries, Lees Manufacturing, Blountsville, AL: October 9, 1996.*

*TA–W–33,581; Pro Line Cap Co., Bowie, TX: May 9, 1996*

*TA–W–33,783; General Electric Co., Motors Div., General Electric Co Transformer Div., Fort Wayne, IN: July 19, 1997.*

*TA–W–33,898; Weyerhaeuser Wood Products, Plywood Division, Philadelphia, MS: October 3, 1996.*

*TA–W–33,868; About Sportswear, New York, NY: September 18, 1996.*

*TA–W–33,827; Standard Fittings (Jobs for St. Landry Parish, Inc), Opelousas, LA: September 11, 1996.*

*TA–W–33,931; The Stroh Brewery Co., St. Paul, MN: October 8, 1996.*

*TA–W–33,968; Pendleton Woolen Mills, Milwaukee, OR: October 23, 1996.*

*TA–W–33,966; Cason Manufacturing Co., Stephenville, TX: October 24, 1996.*

*TA–W–33,948; W.S.W. Company of Sharon, Inc., Bradford, TN: October 17, 1996.*

*TA–W–33,838; Elaine Benedict, Inc., Miami, FL: August 31, 1996.*

*TA–W–34,010; Parker Hannifin Co., Berea, KY: October 20, 1996.*

*TA–W–33,892; Port Clyde Canning Co., Rockland, ME: September 16, 1996.*

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (P.L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the month of November, 1997.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of Section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof (including workers in any agricultural firm or appropriate subdivision thereof), have become totally or partially separated from employment and either—

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely,

(3) That imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increases in imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

**Negative Determinations NAFTA–TAA**

In each of the following cases the investigation revealed that criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers' separations. There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

*NAFTA–TAA–01956; The Stroh Brewery Co., St. Paul, MN*
*NAFTA–TAA–02006; Gary Peterson Logging, Inc., Cascade, ID*
*NAFTA–TAA–01897; SMS Textile Mills, Allentown, PA*
*NAFTA–TAA–01758; Henry Franklin Green, Pahokee, FL*
*NAFTA–TAA–01962; Basler Electric, Corning Division, Corning, AR*
*NAFTA–TAA–02003; Packwood Lumber Co., a Subsidiary of Pacific Lumber and Shipping, Packwood, WA*
*NAFTA–TAA–01835; J.G. Furniture Group, Inc., Quakertown, PA*

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

*NAFTA–TAA–01793; Alpha Mills Corp., KXCF Division, Annville, PA*

The investigation revealed that criteria (2) was not met. Sales or production, or both did not decline during the relevant period as required for certification.

**Affirmative Determinations NAFTA–TAA**

The following certifications have been issued; the date following the company name and location for each determination references the impact date for all workers for such determination.

*NAFTA–TAA–01902; General Electric Co., Motors Division & Transformer Division, Frt Wayne, IN: November 19, 1997*
*NAFTA–TAA–01983; Sterling Stainless Tube Corp. (A Subsidiary of ITT Automotive), Englewood, CO: October 15, 1996*
*NAFTA–TAA–01990; Cason Manufacturing Co., Stephenville, TX: October 24, 1996*
*NAFTA–TAA–01948; Texas Instruments, Inc., Central Lake, MI: September 30, 1996*
*NAFTA–TAA–01952; JLG Industries, Inc., McConnellsburg, PA: October 6, 1996*

I hereby certify that the aforementioned determinations were issued during the month of November, 1997. Copies of these determinations are available for inspection in Room C–4318, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, during normal business hours or will be mailed to persons who write to the above address.

Dated: December 2, 1997.

**Grant D. Beale,**

*Acting Director, Office of Trade Adjustment Assistance.*

[FR Doc. 97–32299 Filed 12–9–97; 8:45 am]

BILLING CODE 4510–30–M

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–33,870]**

### Solvay Animal Health, Incorporated, Mendota Heights, Minnesota; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on October 6, 1997 in response to a worker petition which was filed on behalf of workers at Solvay Animal Health, Incorporated, Mendota Heights, Minnesota.

The petitioners have requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, D.C. this 25th day of November 1997.

**Grant D. Beale,**

*Acting Director, Office of Trade Adjustment Assistance.*

[FR Doc. 97–32293 Filed 12–9–97; 8:45 am]

BILLING CODE 4510–30–M

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–33,338]**

### The Standard Products Company, Lexington, Kentucky; Notice of Negative Determination Regarding Application for Reconsideration

By application of July 25, 1997, the International Union, United Automobile, Aerospace & Agricultural Implements of America—UAW requested administrative reconsideration of the Department's negative determination regarding worker eligibility to apply for trade adjustment assistance, applicable to workers of the subject firm. The denial notice was signed on June 5, 1997 and was published in the **Federal Register** (62 FR 34711) on June 27, 1997.

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) if it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) if in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The request for reconsideration claims that some of the equipment in the Lexington, Kentucky was being sent to Georgetown, Canada to produce parts that were produced at the subject firm and that some machinery was being sent to Goldsboro, North Carolina and would later be sent to the company's plant in Mexico.

In order for the Department to issue a worker group certification, all of the group eligibility requirements of Section 222 of the Trade Act must be met. Review of the investigation findings show that criterion (3) was not met. Layoffs at the subject firm were the result of the consolidation of extruded and molded rubber sealing system component production from the subject firm into two other company-owned plants located domestically in Gaylord,

Michigan and Goldsboro, North Carolina. The shift in production is attributed to domestic excess capacity and the company's need to cut costs to stay competitive in the market place. No production performed at the subject firm was shifted to any foreign location to serve the company's domestic market. The equipment at the plant was shipped to whichever plants of the company had a need for additional machinery that could be used in the company's extrusion process. Except for the shipment of certain machinery to Gaylord and Goldsboro for the express purpose of serving the enhanced production at those facilities, no machinery was shipped to any location to support the production of parts that had previously been made in Lexington. Some equipment was shipped to Georgetown, Canada, to support existing production at that plant, but no production moved from Lexington to Georgetown, Canada or is being imported back to the United States.

The company recently opened a plant in Mexico. At present the plant has received two contracts, one from a Japanese manufacturer, and one from an American manufacturer. Production under these contracts will not begin before 1999. The Company's Mexican production will supply those automakers in Mexican plants only.

**Conclusion**

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, D.C. this 28th day of November 1997.

**Grant D. Beale,**

*Acting Director, Office of Trade Adjustment Assistance.*

[FR Doc. 97–32303 Filed 12–9–97; 8:45 am]

BILLING CODE 4510–30–M

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–33,793]**

### Thomas & Betts, Augat Division, Sanford, Maine; Including Leased Workers of Manpower Temporary Services, Sanford, Maine; Kelly Services, Incorporated, Biddeford, Maine; Olsten Staffing Services, Portland, Maine; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on September 24, 1997, applicable to all workers of Thomas & Betts, Augat Division located in Sanford, Maine. The notice was published in the **Federal Register** on October 14, 1997 (62 FR 53348).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. New information provided by the company shows that some employees of Thomas & Betts, Augat Division were leased from manpower Temporary Services, Kelly Services, Incorporated and Olsten Staffing Services to produce terminal blocks and plastic molds at the Sanford, Maine facility. Worker separations occurred at Manpower Temporary Services, Kelly Services, Incorporated and Olsten Staffing Services as a result of worker separation at Thomas & Betts, Augat Division, Sanford, Maine.

Based on these findings, the Department is amending the certification to include workers of Manpower Temporary Services, Sanford, Maine, Kelly Services, Incorporated, Biddeford, Maine and Olsten Staffing Services, Portland, Maine leased to Thomas & Betts, Augat Division, Sanford, Maine.

The intent of the Department's certification is to include all workers of Thomas & Betts, Augat Division adversely affected by imports.

The amended notice applicable to TA–W–33,793 is hereby issued as follows:

''All workers of Thomas & Betts, Augat Division, Sanford, Maine and leased workers of Manpower Temporary Services, Sanford, Maine, Kelly Services, Incorporated, Biddeford, Maine and Olsten Staffing Services, Portland, Maine engaged in employment related to the production of terminal blocks and plastic molds for Thomas & Betts, Augat Division, Sanford, Maine who became totally or partially separated from employment on or after August 7, 1996, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.''

Signed at Washington, DC this 28th day of November 1997.

**Grant D. Beale,**

*Acting Director, Office of Trade Adjustment Assistance.*

[FR Doc. 97–32305 Filed 12–9–97; 8:45 am]

BILLING CODE 4510–30–M

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Proposed Information Collection Request Submitted for Public Comment and Recommendations; Petition for NAFTA-Transitional Adjustment Assistance

**ACTION:** Notice.

**SUMMARY:** The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments concerning the proposed renewal of the information collection of the Petition for Transitional Adjustment Assistance, ETA 9042.

A copy of the proposed information collection request can be obtained by contacting the employee listed below in the contact section of this notice.

**DATES:** Written comments must be submitted on or before February 9, 1998. Written comments should evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; enhance the quality, utility, and clarity of the information to

be collected; and minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological automated, electronic, mechanical, or other technological collection techniques or others forms of information technology, e.g., permitting electronic submissions of responses.

**ADDRESSES:** Grant D. Beale, Office of Trade Adjustment Assistance, Employment and Training Administration, Department of Labor, Room C–4318, 200 Constitution Avenue, N.W., Washington, D.C. 20210, 202–219–5555 (this is not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

**I. Background**

The North American Free Trade Agreement (NAFTA) Implementation Act amended Chapter 2 of Title II of the Trade Act of 1974 to add a Subchapter D—NAFTA Transitional Adjustment Assistance Program. This program provides needed adjustment assistance to workers adversely affected because of imports from Canada to Mexico or shifts to production from the United States to those countries.

Section 250 of the Act authorizes the Governor of each State to accept petitions for certification of eligibility to apply for NAFTA transitional adjustment assistance. A petition may be filed by a group of three workers (including workers in any agricultural firm or subdivision or an agricultural firm), their union or other duly authorized representative including community-based organizations, or a company official. Form ETA–9042, Petition for NAFTA Transitional Adjustment Assistance, establishes the format which has been used by the Governor to facilitate petition filings.

**II. Current Actions**

This is a request for OMB approval under [the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)] for renewal of a of collection of information previously approved and assigned OMB Control No. 1205–0342. There is a reduction of 70 burden hours as the result of a reestimate of the number of petitions filed.

*Type of Review:* Extension without change.

*Agency:* Employment and Training Administration, Labor.

*Title:* Petition for NAFTA Transitional Adjustment Assistance.

*OMB Number:* 1205–0342.

*Agency Number:* ETA–9042.

*Affected Public:* Individuals or households.

*Total Respondents:* Estimated 1,000.

*Frequency:* On Occasion.

| | |
|---|---|
| *Estimated Time Per Response:* | |
| Respondents (minutes) | 15 |
| State Review (minutes) | 5 |
| *Estimated Total Burden Hours:* | |
| Respondents (hours) | 250 |
| State Review (hours) | 80 |
| Total (hours) | 330 |
| *Estimated Respondent Cost:* | |
| Respondents | $6,250 |
| State Review | *$1,406* |
| Total | $7,656 |

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: December 4, 1997.

**Grant D. Beale,**

*Acting Director, Office of Trade Adjustment Assistance.*

[FR Doc. 97–32290 Filed 12–9–97; 8:45 am]

**BILLING CODE 4510–30–M**

## DEPARTMENT OF LABOR

## Employment and Training Administration

## Proposed Information Collection Request Submitted for Public Comment and Recommendations; NAFTA-Transitional Adjustment Assistance, Confidential Data Request

**ACTION:** Notice.

**SUMMARY:** The Department of labor, as a part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure the requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments concerning the proposed renewal of the information collection of the NAFTA Transitional Adjustment Assistance Confidential Data Request, ETA 9043.

A copy of the proposed information collection request can be obtained by contacting the employee listed below in the contact section of this notice.

**DATES:** Written comments must be submitted on or before February 10, 1998. Written comments should evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; enhance the quality, utility, and clarity of the information to be collected; and minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological automated, electronic, mechanical, or other technnological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

**ADDRESSES:** Grant D. Beale, Office of Trade Adjustment Assistance, Employment and Training Administration, Department of Labor, Room C–4318, 200 Constitution Avenue, N.W., Washington, D.C. 20210, 202–219–5555 (this is not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

**I. Background**

The North American Free Trade Agreement (NAFTA) Implementation Act amended Chapter 2 of Title II of the Trace Act of 1974 to add a Subchapter D—NAFTA Transitional Adjustment Assistance Program. This program provides needed adjustment assistance to workers adversely affected because of imports from Canada or Mexico or shifts of production from the United States to those countries.

Section 250 of the Act authorizes the Governor of each State to accept petitions for certification of eligibility to apply for adjustment assistance. Once a petition for NAFTA adjustment assistance is filed with the Governor in the State where the firm is located, the law gives the Governor ten days to make a preliminary finding of whether the petition meets the group eligibility requirements under Subchapter D, and transmits the finding to the Secretary of Labor. The NAFTA Confidential Data Request Form ETA–9043 establishes the format which has been used by the Governor for making a preliminary finding.

**II Current Actions**

This is a request for OMB approval under [the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)] for renewal of a collection of information assigned OBM Control No. 1205–0339. This is a reduction of 1,500 burden hours as the result of a reestimate of the number of petitions filed.

*Type of Review:* Extension without change.

*Agency:* Employment and Training Administration, Labor.

*Title:* NAFTA-Confidential Data Request.

*OMB Number:* 1205–0339.

*Agency Number:* ETA–9043.

*Affected Public:* Businesses and State.

*Total Respondents:* Estimated 1,000.

*Frequency:* On occasion.

*Average Time per Response:* Respondents=3 hours; State Review=4.5 hours.

*Estimated Total Burden Hours:* Respondents=3,000; State review=4,500; Total=7,500.

*Estimated Respondent Cost:* Respondents=$53,610; State review=$79,110; Total=$132,720.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: December 4, 1997.

**Grant D. Beale,**

*Acting Director, Office of Trade Adjustment Assistance.*

[FR Doc. 97–32291 Filed 12–9–97; 8:45 am]

**BILLING CODE 4510–30–M**

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Proposed Information Collection Request Submitted for Public Comment and Recommendations; NAFTA-Transitional Adjustment Assistance Customer Survey Form

**ACTION:** Notice.

**SUMMARY:** The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instructions are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments concerning the proposed renewal of the information collection of the NAFTA Transitional Adjustment Assistance Customer Survey Form, ETA 9044.

A copy of the proposed information collection request can be obtained by contacting the employee listed below in the contact section of this notice.

**DATES:** Written comments must be submitted on or before February 9, 1998. Written comments should evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; enhance the quality, utility, and clarity of the information to be collected; and minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

**ADDRESSES:** Grant D. Beale, Office of Trade Adjustment Assistance, Employment and Training Administration, Department of Labor, Room C–4318, 200 Constitution Avenue, N.W., Washington, D.C. 20210, 202–219–5555 (this is not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

**Background**

The North American Free Trade Agreement (NAFTA) Implementation Act amended Chapter 2 of Title II of the Trade Act of 1974 to add a Subchapter D—NAFTA Transitional Adjustment Assistance Program. This program provides needed adjustment assistance to workers adversely affected because of imports from Canada or Mexico or shifts of production from the United States to those countries.

Section 250 of the Act authorizes the Governor of each State to accept petitions for certification of eligibility to apply for NAFTA transitional adjustment assistance. Once a preliminary finding is issued by the Governor, the Secretary must determine to what extent, if any, increased imports from Mexico or Canada have impacted the petitioning workers' firm selling market, and thus determine whether the statutory criteria for worker group eligibility are met. The customer survey form establishes the format which has been by the Secretary to determine the impact of imports.

**II. Current Actions**

This is a request for OMB approval under [the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)] for renewal of a collection of information previously approved and assigned OMB Control No. 1205–0337. There is an addition of 210 burden hours as the result of a reestimate of the number of responses and the number of hours required to complete the form.

*Type of Review:* Extension without change.

*Agency:* Employment and Training Administration, Labor.

*Title:* Petition For NAFTA Transitional Adjustment Assistance.

*OMB Number:* 1205–0337.

*Agency Number:* ETA–9044.

*Affected Public:* Businesses.

*Total Respondents:* Estimated 420.

*Frequency:* On occasion.

*Estimated Time Per Response:* 2 hours.

*Estimated Total Respondent Cost:* $32,130.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: December 4, 1997.

**Grant D. Beale,**

*Acting Director, Office of Trade Adjustment Assistance.*

[FR Doc. 97–32292 Filed 12–9–97; 8:45 am]

**BILLING CODE 4510–30–M**

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[NAFTA–01807; NAFTA–01807X]**

### Levi Strauss and Company; Goodyear Cutting Facility and El Paso Field Headquarters El Paso, Texas and San Benito, Texas; Amended Certification Regarding Eligibility to Apply for NAFTA-Transitional Adjustment Assistance

In accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 USC 2273), the Department of Labor issued a

Certification of Eligibility to Apply for NAFTA Transitional Adjustment Assistance on August 7, 1997, applicable to workers of Levi Strauss and Company, located in El Paso, Texas. The notice was published in the **Federal Register** on September 17, 1997 (62 FR 48889). The certification was subsequently amended to include the subject firm workers at the El Paso Field Headquarters in El Paso, Texas. The amendment was issued on September 14, 1997 and published in the **Federal Register** on September 30, 1997 (62 FR 51161).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. New information received by the State shows that worker separations have occurred at the San Benito, Texas plant of Levi Strauss and Company. The workers in San Benito are engaged in employment related to the production of men's, women's and youth's denim jeans and jackets. Based on this new information, the Department is amending the certification to cover the subject firms' workers at the San Benito, Texas plant.

The intent of the Department's certification is to include all workers of Levi Strauss and Company who were adversely affected by increased imports from Mexico of men's, women's and youth's denim jeans and jackets.

The amended notice applicable to NAFTA–01807 is hereby issued as follows:

All workers of Levi Strauss and Company, Goodyear Cutting Facility and El Paso Field Headquarters, El Paso, Texas (NAFTA–01807) and San Benito, Texas (NAFTA–01807X) who were engaged in employment related to the production of men's, women's and youth's denim jeans and jackets who became totally or partially separated from employment on or after July 9, 1996 are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974.

Signed in Washington, D.C. this 10th day of November 1997.

**Grant D. Beale,**

*Acting Director, Office of Trade Adjustment Assistance.*

[FR Doc. 97–32301 Filed 12–9–97; 8:45 am]

BILLING CODE 4510–30–M

## INTERNATIONAL BOUNDARY AND WATER COMMISSION, UNITED STATES AND MEXICO

### Availability of Final Environmental Assessment and Finding of No Significant Impact

**AGENCIES:** United States Environmental Protection Agency (USEPA) and the United States Section, International Boundary and Water Commission, United States and Mexico (USIBWC)

**ACTION:** Notice of availability of final environmental assessment and finding of no significant impact.

**SUMMARY:** Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Final Regulations (40 CFR parts 1500 through 1508); and the United States Section's Operational Procedures for Implementing Section 102 of NEPA, published in the **Federal Register** September 2, 1981 (46 FR 44083); the United States Environmental Protection Agency and the United States Section hereby gives notice that the Final Environmental Assessment (EA) and Final Finding of No Significant Impact (FONSI) for the Mexicali Wastewater Collection and Treatment Project are available. Copies of the draft EA and draft FONSI were made available at the main Public Libraries in the cities of Calexico, El Centro, Holtville and Brawley located in Imperial County, California on September 29, 1997 for a 30-day review period before making the finding final. The information was also made available on the Internet (USIBWC homepage).

**ADDRESSES:** Carlos Peña Jr., Facilities Planning Border Coordinator; United States Section, International Boundary and Water Commission, United States and Mexico, 4171 North Mesa Street, C–310, El Paso, Texas 79902. Telephone: 915/534-6605.

**SUPPLEMENTARY INFORMATION:** In accordance with National Environmental Policy Act (NEPA) requirements, the United States Environmental Protection Agency (EPA) and the United States Section of the International Boundary and Water Commission (USIBWC) completed an environmental review of the impacts of the Mexicali Wastewater Collection and Treatment Project proposed by the Comisión Estatal de Servicios Públicos de Mexicali (CESPM). The FONSI was based on the analyses presented in the Environmental Assessment for Mexicali Wastewater Collection and Treatment Project. The proposed action consists of several projects designed to improve the water quality discharge from the Mexicali treatment system and water quality in the New River. The NEPA review was required because of the issuance funds for the project.

In accordance with the guidelines for determining the significance of proposed federal actions (40 CFR 1508.27) and Border Environment Cooperation Commission (BECC) Criteria for initiating an environmental assessment, the EPA and USIBWC concluded that the proposed action will not result in a significant effect on the environment. The proposal will not significantly affect land use patterns or population, wetlands or floodplains, threatened or endangered species, farmlands, ecologically critical areas, cultural or historic resources, traffic, visual, geological resources, public health and safety, socioeconomic conditions, energy demand, air quality, water quality, noise levels, fish and wildlife resources, nor will it conflict with local or state land use plans or policies. The proposal conforms with all applicable federal statutes and executive orders.

The CESPM submitted to the BECC an Environmental Assessment (Manifestacion de Impacto Ambiental Modalidad General del Projecto Saneamiento del Rio Nuevo en la C.D. de Mexicali, Baja California) that disclosed the impacts in Mexico from this project. It was determined that there were no significant impacts.

The USEPA and USIBWC determined that the proposed action would not significantly impact the environment of the United States and that the preparation of an Environmental Impact Statement (EIS) is not required.

### Availability

Copies of the Final Act and Final FONSI have been distributed to Federal, State, and local agencies, organizations and individuals that have commented on or have consulted and coordinated in the preparation of the EA. A limited number of copies are available to fill single copy requests at the above address.

Dated: December 3, 1997.

**John Bernal,**

*Commissioner, IBWC U.S. Section.*

[FR Doc. 97–32258 Filed 12–9–97; 8:45 am]

BILLING CODE 4710–03–M

## NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

### Public Meetings With Interested Vendors for Ordering Reproductions of Still Photographs, Aerial Film, Maps, and Drawings

**AGENCY:** National Archives and Records Administration, NARA

**ACTION:** Notice of meetings.

**SUMMARY:** NARA will hold meetings with interested vendors to discuss the terms of the fourth year of privatization of reproduction services for still pictures, aerial film, maps, and

drawings in NARA holdings in College Park, MD, and to distribute copies of the Memorandum of Agreement which must be completed for participation in the program. Under this privatization program, NARA has permitted vendors to set up work stations in its building located in College Park, MD, where the still photographs and cartographic and architectural records of three NARA archival units are housed and made available. The three NARA units refer customer requests for reproduction of these media to the vendors, who determine fees, collect payments, perform the copying work, and mail the reproductions to the customers. Based on a satisfactory review of the program's overall performance, NARA has decided to extend the program for another year, though with some modifications.

Effective March 6, 1998, the next anniversary date, NARA will open the program to interested vendors for a fourth year. All vendors interested in this program, including vendors already participating, are invited to attend a meeting on January 7, 1998, where copies of a Memorandum of Agreement specifying the terms of the program will be distributed. A follow-up meeting has been scheduled for February 4, 1998, to answer any remaining questions from vendors. Attendance at the meetings does not require reservations. Attendance is encouraged, but not required, to participate in the program.

**DATES:** The initial meeting will be held on Wednesday, January 7, 1998, at 10 a.m. Copies of the Memorandum of Agreement also will be available beginning January 7, 1998, by contacting William T. Murphy (see **FOR FURTHER INFORMATION CONTACT**).

The follow-up meeting will be held on Wednesday, February 4, 1998, at 10 a.m.

Signed copies of the Memorandum of Agreement must be received by NARA by February 28, 1998.

**ADDRESSES:** The meetings will be held at the National Archives at College Park, in lecture room A, located at 8601 Adelphi Road, College Park, MD.

**FOR FURTHER INFORMATION CONTACT:** William T. Murphy, Nontextual Archives Division, 301–713–7083; fax 301–713–6904.

Dated: December 3, 1997.

**Michael J. Kurtz,**

*Assistant Archivist for Records Services—Washington, DC.*

[FR Doc. 97–32227 Filed 12–9–97; 8:45 am]

**BILLING CODE 7515–01–P**

## NUCLEAR REGULATORY COMMISSION

### Agency Information Collection Activities: Proposed Collection; Comment Request

**AGENCY:** U.S. Nuclear Regulatory Commission (NRC).

**ACTION:** Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

**SUMMARY:** The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

**Information pertaining to the requirement to be submitted:**

1. The title of the information collection: State Agreements Program, as authorized by Section 274(b) of the Atomic Energy Act.
2. Current OMB approval number: 3150–0029.
3. How often the collection is required: One time or as needed.
4. Who is required or asked to report? Thirty Agreement States who have signed Section 274(b) agreements with NRC.
5. The number of annual respondents: 30.
6. The number of hours needed annually to complete the requirement or request: 570 (approximately six hours per response).
7. Abstract: Agreement States are surveyed on a one-time or as-needed basis, e.g., to respond to a specific incident, to gather information on licensing and inspection practices and other technical and statistical information. The results of such information requests, which are authorized under Section 274(b) of the Atomic Energy Act, are utilized in part by NRC in preparing responses to Congressional inquiries. Agreement State comments are also solicited in the areas of proposed procedure and policy development.

Submit, by February 9, 1998, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?
2. Is the burden estimate accurate?
3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?
4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW (lower level), Washington, DC. OMB clearance requests are available at the NRC worldwide web site (http://www.nrc.gov) under the FedWorld collection link on the home page tool bar. The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–6 F33, Washington, DC 20555–0001, or by telephone at 301–415–7233, or by Internet electronic mail at BJS1@NRC.GOV.

Dated at Rockville, Maryland, this 4th day of December, 1997.

For the Nuclear Regulatory Commission.

**Brenda Jo. Shelton,**

*NRC Clearance Officer, Office of the Chief Information Officer.*

[FR Doc. 97–32272 Filed 12–9–97; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

**[Docket Number 40–8452]**

### Bear Creek Uranium Company; Notice of Opportunity for Hearing

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of Receipt of Application from Bear Creek Uranium Company to change two site-reclamation milestones in Condition 49 of Source Material License No. SUA–1310 for the Bear Creek, Wyoming Uranium Mill site.

**SUMMARY:** Notice is hereby given that the U.S. Nuclear Regulatory Commission (NRC) has received, by letter dated October 24, 1997, an application from Bear Creek Uranium Company (BCUC) to amend License Condition (LC) 49 of Source Material License No. SUA–1310 for the Bear Creek, Wyoming uranium mill site. By this amendment application, the licensee proposes to modify LC 49 to change the completion date for two site-reclamation milestones. The new dates proposed by BCUC would extend the completion of placement of the final radon barrier by one year and the completion of placement of the erosion protection cover by five months. BCUC is requesting these extensions because

of delays caused by inclement weather conditions during this year's construction season.

**FOR FURTHER INFORMATION CONTACT:** Charlotte E. Abrams, Uranium Recovery Branch, Division of Waste Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone (301) 415–5808.

**SUPPLEMENTARY INFORMATION:** The portion of LC 49 with the proposed changes would read as follows:

A. (3) Placement of the final radon barrier designed and constructed to limit radon emissions to an average flux of no more than 20 pCi/m $^2$/s above background:

For tailings pile surface areas not covered by evaporation ponds constructed as part of the groundwater corrective action program—December 31, 1998.

For the total tailings pile surface after evaporation pond removal—December 31, 1998.

B. Reclamation, to ensure required longevity of the covered tailings and groundwater protection, shall be completed as expeditiously as is reasonably achievable, in accordance with the following target dates for completion:

(1) Placement of erosion protection as part of reclamation to comply with Criterion 6 of Appendix A of 10 CFR Part 40—December 31, 1998.

BCUC's application to amend LC 49 of Source Material License SUA–1310, which describes the proposed changes to the license condition and the reasons for the request is being made available for public inspection at the NRC's Public Document Room at 2120 L Street, NW (Lower Level), Washington, DC 20555.

### Notice of Opportunity for Hearing

The NRC hereby provides notice of an opportunity for a hearing on the license amendment under the provisions of 10 CFR part 2, subpart L, ''Informal Hearing Procedures for Adjudications in Materials and Operator Licensing Proceedings.'' Pursuant to § 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing. In accordance with § 2.1205(c), a request for a hearing must be filed within 30 days of the publication of this notice in the **Federal Register**. The request for a hearing must be filed with the Office of the Secretary, either:

(1) By delivery to the Docketing and Service Branch of the Office of the Secretary at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852; or

(2) By mail or telegram addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch.

In accordance with 10 CFR 2.1205(e), each request for a hearing must also be served, by delivering it personally or by mail, to:

(1) The applicant, Bear Creek Uranium Company, P.O. Box 366, Casper, Wyoming 82602, Attention: Gary Chase; and

(2) The NRC staff, by delivery to the Executive Director for Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852 or by mail addressed to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

In addition to meeting other applicable requirements of 10 CFR Part 2 of the NRC's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

(1) The interest of the requestor in the proceeding;

(2) How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing, with particular reference to the factors set out in § 2.1205(g);

(3) The requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and

(4) The circumstances establishing that the request for a hearing is timely in accordance with § 2.1205(c).

The request must also set forth the specific aspect or aspects of the subject matter of the proceeding as to which petitioner wishes a hearing.

Dated at Rockville, Maryland, this 1st day of December 1997.

For the Nuclear Regulatory Commission.

**Joseph J. Holonich,**

*Chief, Uranium Recovery Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.*

[FR Doc. 97–32271 Filed 12–9–97; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

**[Docket Number 40–0299]**

### Umetco Minerals Corporation

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Amendment of Source Material License SUA–648 to change six reclamation milestone dates.

**SUMMARY:** Notice is hereby given that the U.S. Nuclear Regulatory Commission has amended Umetco Minerals Corporation's (Umetco's) Source Material License SUA–648 to change six reclamation milestone dates. This amendment was requested by Umetco in its letter dated October 6, 1997, and the receipt of the request by NRC was noticed in the **Federal Register** on October 16, 1997.

The license amendment modifies License Condition 59 to change completion dates for six site-reclamation milestones. The new dates approved by the NRC extend completion of placement of final radon barrier for the Inactive (enhanced barrier) and the A–9 impoundments by four years, and that for the Heap Leach impoundment by one year; and placement of erosion protection cover for the Inactive impoundment by five years, and for the A–9 and the Heap Leach impoundments by four years. Umetco attributes the delays to its efforts to enhance the previously approved designs of the Inactive and the A–9 impoundments, and in obtaining permits for a rock quarry that can produce sufficient volumes and quality of rock for erosion protection cover. Based on the review of Umetco's submittal, the NRC staff concludes that the delays are attributable to factors beyond Umetco's control, the proposed work is scheduled to be completed as expeditiously as practicable, and the added risk to the public health and safety is not significant, as it already meets the limit of radon emissions to an average flux of no more than 20 pCi/m$^2$/s above background.

An environmental assessment is not required since this action is categorically excluded under 10 CFR 51.22(c)(11), and an environmental report from the licensee is not required by 10 CFR 51.60(b)(2).

**SUPPLEMENTARY INFORMATION:** Umetco's amended license, and the NRC staff's technical evaluation of the amendment request are being made available for public inspection at the Commission's Public Document Room at 2120 L Street, NW., (Lower Level), Washington, DC 20555.

**FOR FURTHER INFORMATION CONTACT:** Mohammad W. Haque, Uranium Recovery Branch, Division of Waste Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone (301) 415–6640.

Dated at Rockville, Maryland, this 3d day of December, 1997.

**Joseph J. Holonich,**

*Chief, Uranium Recovery Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.*

[FR Doc. 97–32270 Filed 12–9–97; 8:45 am]

**BILLING CODE 7590–01–P**

## OFFICE OF PERSONNEL MANAGEMENT

### The National Partnership Council; Meeting

**AGENCY:** Office of Personnel Management.

**ACTION:** Notice of meeting.

*Time and date:* 1:00 p.m., December 10, 1997.

*Place:* OPM Conference Center, Room 1350, Theodore Roosevelt Building, 1900 E Street, NW., Washington, DC 20415–0001. The conference center is located on the first floor.

*Status:* This meeting will be open to the public. Seating will be available on a first-come, first-served basis. Individuals with special access needs wishing to attend should contact OPM at the number shown below to obtain appropriate accommodations.

*Matters to be Considered:* The National Partnership Council will complete its discussion of and adopt it strategic action plan and meeting schedule for calendar year 1998. The Council will also complete its review of the draft 1998 Report to the President on the Progress of Labor-Management Partnerships.

**CONTACT PERSON FOR MORE INFORMATION:** Michael Cushing, Director, Center for Partnership and Labor-Management Relations, Office of Personnel Management, Theodore Roosevelt Building, 1900 E Street, NW., Room 7H28, Washington, DC 20415–0001, (202) 606–2930.

**SUPPLEMENTARY INFORMATION:** We invite interested persons and organizations to submit written comments. Mail or deliver your comments to Michael Cushing at the address shown above.

Office of Personnel Management.

**Janice R. Lachance,**

*Director.*

[FR Doc. 97–32285 Filed 12–9–97; 8:45 am]

**BILLING CODE 6325–01–M**

## RAILROAD RETIREMENT BOARD

### Determination of Quarterly Rate of Excise Tax for Railroad Retirement Supplemental Annuity Program

In accordance with directions in Section 3221(c) of the Railroad Retirement Tax Act (26 U.S.C., Section 3221(c)), the Railroad Retirement Board has determined that the excise tax imposed by such Section 3321(c) on every employer, with respect to having individuals in his employ, for each work-hour for which compensation is paid by such employer for services rendered to him during the quarter beginning January 1, 1998, shall be at the rate of 35 cents.

In accordance with directions in Section 15(a) of the Railroad Retirement Act of 1974, the Railroad Retirement Board has determined that for the quarter beginning January 1, 1998, 31.6 percent of the taxes collected under Sections 3211(b) and 3221(c) of the Railroad Retirement Tax Act shall be credited to the Railroad Retirement Account and 68.4 percent of the taxes collected under such Sections 3211(b) and 3221(c) plus 100 percent of the taxes collected under Section 3221(d) of the Railroad Retirement Tax Act shall be credited to the Railroad Retirement Supplemental Account.

Dated: December 2, 1997.

By Authority of the Board.

**Beatrice Ezerski,**

*Secretary to the Board.*

[FR Doc. 97–32315 Filed 12–9–97; 8:45 am]

**BILLING CODE 7905–01–M**

## SECURITIES AND EXCHANGE COMMISSION

**[Rel. No. IC–22924; File No. 812–10240]**

### Nationwide Life Insurance Company, et al.; Notice of Application

December 3, 1997.

**AGENCY:** U.S. Securities and Exchange Commission (''SEC or Commission'').

**ACTION:** Notice of application for an order under (i) Sections 6(c) and 17(b) of the Investment Company Act of 1940 (the ''Act'') granting exemptive relief from Section 17(a) of the Act; and (ii) Section 12(d)(1)(J) of the Act granting exemptive relief from Sections 12(d)(1)(A) and 12(d)(1)(B) of the Act.

**SUMMARY OF APPLICATION:** Applicants request an order to commence operations as a ''fund of funds'' whereby certain investment companies would invest in both investment companies that are part of the same ''group of investment companies'' and investment companies that are not part of the same ''group of investment companies.'' Other investments of the ''fund of funds'' could include government securities, short-term fixed income securities, and a guaranteed investment contract.

**APPLICANTS:** Nationwide Life Insurance Company, Nationwide Advisory Services, Inc., Nationwide Asset Allocation Trust, Nationwide Investing Foundation, Nationwide Investing Foundation II, and Nationwide Account Trust.

**FILING DATES:** The application was filed on July 8, 1996, and amended and restated on February 18, 1997, July 25, 1997, and November 19, 1997, and amended on December 3, 1997.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 29, 1997, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

**ADDRESSES:** SEC, Secretary, 450 Fifth Street, N.W., Washington, D.C., 20549. Applicants, Nationwide Life Insurance Company, One Nationwide Plaza, Columbus, Ohio 43215.

**FOR FURTHER INFORMATION CONTACT:** Edward P. Macdonald, Senior Counsel, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549 (tel. (202) 942–8090).

#### Applicants' Representations

1. Nationwide Life Insurance Company (''Nationwide'') is organized as a stock life insurance company under Ohio state law. Nationwide is admitted to do business in all fifty states, as well as the District of Columbia, the U.S. Virgin Islands, and Puerto Rico.

2. Nationwide Asset Allocation Trust (''NAAT'') is a Massachusetts business trust, initially consisting of five series

(the ''Asset Allocation Funds''), with the following investment objectives: Aggressive, Moderately Aggressive, Moderate, Moderately Conservative, and Conservative. Additional Asset Allocation Funds may be established in the future as (i) series of NAAT, (ii) series of any other Nationwide open-end investment company organized as a series trust, or (iii) as any other investment company of Nationwide that does not offer its securities in separate series. Each of the Asset Allocation Funds proposes to operate as a ''fund of funds'' that may invest in (i) shares of investment companies or their series, now existing or created in the future, that are part of the same ''group of investment companies'' (as defined in Section 12(d)(1)(G)(ii) as the Asset Allocation Funds (''Affiliated Underlying Funds'') and (ii) shares of other investment companies that are not part of the same ''group of investment companies'' as the Asset Allocation Funds (''Unaffiliated Underlying Funds'') (Affiliated and Unaffiliated Underlying Funds are collectively referred to as ''Underlying Funds''). In addition to investing in the Underlying Funds, the Asset Allocation Funds also may invest in government securities, certain short-term fixed income securities, and a fixed rate investment contract issued by Nationwide (the ''Fixed Contract'').

3. Nationwide Investing Foundation (''NIF'') is a Michigan business trust and Nationwide Investing Foundation II (''NIF II) and Nationwide Separate Account Trust (''NSAT'') are Massachusetts business trusts registered under the Act as open-end management investment companies. Collectively, the portfolios of NIF, NIF II, and NSAT will initially act as the Affiliated Underlying Funds.

4. Nationwide Advisory Services, Inc. (''NAS'') is a registered broker-dealer and investment adviser and is a member of the National Association of Securities Dealers, Inc. (''NASD''). NAS is a wholly owned subsidiary of Nationwide and serves as principal underwriter of variable annuity contracts and variable life insurance policies issued by Nationwide and Nationwide's wholly subsidiary Nationwide Life and Annuity Insurance Company. Additionally, NAS currently serves as the investment adviser to all of the portfolios in NIF, NIF II, and NSAT. NAS also will serve as the investment adviser for NAAT once NAAT begins operations.

5. Nationwide will issue variable annuity contracts (''Contracts'') designed to be sold to retirement plans of governmental entities. The Contracts will offer participants in these retirement plans an opportunity for asset allocation through the selection of five Asset Allocation Fund options that have investment objectives ranging from conservative to aggressive.

6. The Asset Allocation Funds will invest primarily in Underlying Funds in accordance with a target allocation of investment categories (aggressive growth, growth, growth and income, balanced, guaranteed interest, bond/money market) reflecting the overall objective of each Asset Allocation Fund and matching the participant's risk tolerance and time horizon. The Asset Allocation Funds will invest in Underlying Funds, subject to certain conditions. Some of the Unaffiliated Underlying Funds may be organized as ''feeder'' funds in a ''master-feeder'' structure. The allocation for each Asset Allocation Fund will be ensured through periodic rebalancing.

7. The Asset Allocation Funds also may invest in the Fixed Contract. Each Asset Allocation Fund will be permitted to remove its assets from the Fixed Contract at any time without imposition of a sales charge or market value adjustment.

8. The Underlying Funds will pay advisory fees to their advisers. In addition, the Underlying Funds will pay fees to their service providers for all other services relating to their operations, including custody, administration, and fund accounting. Therefore, shareholders of the Asset Allocation Funds indirectly will pay their proportionate share of any Underlying Fund fees and expenses.

9. The Asset Allocation Funds also will pay a unified fee at the annual rate of .50% of daily net assets to NAS for both investment advisory services and for administrative expenses (the ''Unified Fee''). The portion of the Unified Fee that covers the investment advisory services provided by NAS to the Asset Allocation Funds is for services in addition to, and not duplicative of, those provided by the investment advisers for the Underlying Funds. In Addition, the Asset Allocation Funds will pay for administrative, custody, legal, accounting, and other expenses out of the Unified Fee. The services at the Asset Allocation Fund level are different from the services provided to the Underlying Funds because each Asset Allocation Fund is a separate entity with its own administrative, compliance, recordkeeping, and custody needs.

10. The Asset Allocation Funds will pay no front-end sales loads or contingent deferred sales charges in connection with the purchase or redemption of Underlying Fund shares. In addition, any sales charges or service fees, as defined in Section 2830 of the NASD Conduct Rules, will be limited in the manner described in Condition 3 below. Nationwide, however, will be permitted to include with the Contract a contingent deferred sales load chargeable upon termination of the Contract, to the extent permitted by the Act, the regulations of the NASD, or any other applicable law or regulation.

11. The Contracts will impose an actuarial risk fee related to the Contract's mortality and expense risks and administrative expenses (''Actuarial Risk Fee''). The Actuarial Risk Fee will be paid to Nationwide, and will be equivalent to a maximum of .95% of average account value on an annual basis (.10% for mortality risk, 40% for expense risk, and .45% for administration). The administrative portion of the Actuarial Risk Fee is designed to reimburse Nationwide for maintaining Contract and participant level records and reporting including tax reporting, customer services (including executing and tracking transfers and exchanges for the Contracts) and compliance with applicable laws and regulations. Nationwide, or one of its affiliates, may receive an administrative fee from any of the Underlying Funds, or an adviser or administrator of an Underlying Fund, to compensate Nationwide for maintaining participant level records and providing customer servicing to participants. The receipt by Nationwide of such a fee will result in a corresponding reduction in the Actuarial Risk Fee. In addition, the Actuarial Risk Fee is subject to a sliding scale reduction based on the asset size of a Contract.

**Applicants' Legal Analysis**

*Sections 12(d)(1) (A) and (B) of the Act*

1. Section 12(d)(1)(A) of the Act provides that it shall be unlawful for any registered investment company (the ''acquiring company'') to purchase or otherwise acquire any security issued by any other investment company (the ''acquired company'') if the acquiring company and any other company or companies controlled by it immediately after such purchase or acquisition own in the aggregate (i) more than 3% of the total outstanding voting stock of the acquired company, (ii) securities issued by the acquired company having an aggregate value in excess of 5% of the value of the total assets of the acquiring company, or (iii) securities issued by the acquired company and all other investment companies having an

aggregate value in excess of 10% of the value of the total assets of the acquiring company.

2. Section 12(d)(1)(B) of the Act provides that it shall be unlawful for any registered open-end investment company (the ''acquired company'') knowingly to sell or otherwise dispose of any security issued by the acquired company to any other investment company (the ''acquiring company'') or any company or companies controlled by the acquiring company if immediately after such sale or disposition (i) more than 3% of the total outstanding voting stock of the acquired company is owned by the acquiring company and any company or companies controlled by it, or (ii) more than 10% of the total outstanding voting stock of the acquired company is owned by the acquiring company and other investment companies controlled by them.

3. Section 12(d)(1)(G)(i) of the Act states that Section 12(d)(1) does not apply to securities of a registered open-end investment company (the ''acquired company'') purchased or otherwise acquired by a registered open-end investment company (the ''acquiring company'') if (i) the acquired company and the acquiring company are part of the same group of investment companies, (ii) the securities of the acquired company, securities of other registered open-end investment companies that are part of the same group of investment companies, government securities, and short-term paper are the only investments held by the acquiring company, (iii) with respect to securities of the acquiring company, any sales loads and other distribution-related fees charged, when aggregated with any sales load and distribution-related fees paid by the acquiring company with respect to securities of the acquired fund, are not excessive under rules adopted pursuant to Section 22(b) or Section 22(c) by a securities association registered under Section 15A of the Securities Exchange Act of 1934, or the Commission, and (iv) the acquired company has a policy that prohibits it from acquiring any securities of registered investment companies in reliance on Section 12(d)(1) (G) or (F).

4. Applicants state that the Asset Allocation Funds may not rely on the exemption provided by Section 12(d)(1)(G) because they propose to invest in shares of Unaffiliated Underlying Funds and the Fixed Contract as well as securities of funds that are part of the same ''group of investment companies'' as the Asset Allocation Funds, government securities, and short-term paper.

5. Section 12(d)(1)(F) of the Act provides that the provisions of Section 12(d)(1) shall not apply to securities purchased or otherwise acquired by a registered investment company if immediately after such purchase or acquisition, not more than 3% of the total outstanding stock of such issuer is owned by such registered investment company and all affiliated persons of such registered investment company; and such registered investment company has not offered or sold and is not proposing to offer or sell any security issued by it through a principal underwriter or otherwise at a public offering price that includes a sales load of more than 1½%. Further, no issuer of any security purchased under Section 12(d)(1)(F) shall be obligated to redeem such security in an amount exceeding 1% of such issuer's total outstanding securities during any period less than 30 days. Applicants state that investments by the Asset Allocation Funds in Unaffiliated Underlying Funds will be made in accordance with Section 12(d)(1)(F).

6. Section 12(d)(1)(J) of the Act provides that the Commission is authorized to exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions from any provisions of Section 12(d)(1), if and to the extent that such exemption is consistent with the public interest and the protection of investors. Applicants request an order under Section 12(d)(1)(J) exempting them from the limitations of Sections 12(d)(1) (A) and (B).

7. Applicants assert that the purpose of Section 12(d) of the Act was to prevent unregulated pyramiding of investment companies and the negative effects that are perceived to arise from such pyramiding. Such abuses include duplicative costs, the exercise of undue influence or control over the underlying funds, the threat of large-scale redemptions, and the complexity of such arrangements.

*Duplication of Costs*

8. Applicants argue that the proposed arrangement will include safeguards designed to address layering of fees. They assert that, before approving any advisory contract under Section 15 of the Act, the trustees of the Asset Allocation Funds, including a majority of the trustees who are not ''interested persons,'' as defined in Section 2(a)(19) of the Act, would find that any advisory fees or charges under the contract are based on services that are in addition to, rather than merely duplicative of, services provided under the advisory contract for any Underlying Fund.

9. Applicants also submit that the structure of the Asset Allocation Funds will not implicate sales charge layering concerns because the Asset Allocation Funds will not purchase Underlying Funds that impose a sales load upon the Asset Allocation Funds. Furthermore, Applicants argue that as a condition for the requested relief, they will limit any sales charges or service fees as defined in Section 2830 of the NASD Conduct Rules by agreeing that such fees will only be charged at either the Asset Allocation Fund level or at the Underlying Fund level, but not both. Applicants believe that these limits place the Contracts and the Asset Allocation Funds in a position that is similar to that for other group variable annuity contracts and their underlying mutual fund options.

10. Administrative expenses will be charged at the Underlying Fund level and, as part of the Unified Fee, at the Asset Allocation Fund level. Applicants assert that similar, but distinct, administrative services need to be provided at both the Asset Allocation Fund level and the Underlying Fund level in order to provide the benefits of asset allocation. Applicants also state that they have limited the total expenses of the Asset Allocation Funds by adopting a Unified Fee.

11. Applicants state that the administration portion of the Actuarial Risk Fee is designed to reimburse Nationwide for maintaining Contract and participant level records and reporting, providing customer services, and compliance functions. Applicants argue that these services directly affect contract owners and their participants and, as such, are distinct from any administrative charges at the Asset Allocation Fund and Underlying Fund levels. In addition, Applicants note that if Nationwide receives any administrative or service fees from the Underlying Funds, or from the adviser or administrator of the Underlying Funds, to compensate Nationwide for providing these services, there will be a corresponding reduction in the Actuarial Risk Fee.

12. Furthermore, Applicants represent that fees and charges at all levels, in the aggregate, will be reasonable in relation to the services rendered, expenses expected to be incurred, and risks assumed by Nationwide.

*Control*

13. Applicants further assert that the Unaffiliated Underlying Funds cannot be controlled in any meaningful way by the Asset Allocation Funds since

purchases will be made in accordance with the percentage limitations in Section 12(d)(1)(F).

14. Moreover, when purchasing Affiliated Underlying Funds the concern over this potential abuse is minimized, Applicants submit, because there is little risk that NAS will exercise inappropriate control over the Affiliated Underlying Funds, which are part of the ''same group of investment companies.'' NAS, in serving as the investment adviser for both the Asset Allocation Funds and the Affiliated Underlying Funds, is under a fiduciary obligation to act in the best interests of the shareholders of both sets of funds. Therefore, it is argued, NAS will not operate the Asset Allocation Funds so as to penalize the Affiliated Underlying Funds.

*Large Scale Redemptions*

15. Applicants assert that there is little risk that the Asset Allocation Funds' adviser will exercise inappropriate control over the Affiliated Underlying Funds, which are part of the same ''group of investment companies.'' In this connection, Applicants note that Section 12(d)(1)(G) of the Act does not impose any express limitations on statutory funds of funds with respect to redemption of shares of the underlying funds. With respect to investments by the Asset Allocation Funds in shares of Unaffiliated Underlying Funds, Applicants state that the Asset Allocation Funds, together with their affiliates, will comply with the restrictions of Section 12(d)(1)(F) on redeeming more than 1% of the outstanding securities of any of the Unaffiliated Underlying Funds during any period of less than 30 days.

*Complexity*

16. Finally, Applicants submit that, with respect to whether the proposed structure is complex, Congress, in Section 12(d)(1)(G)(i)(IV), required that the funds underlying a statutory fund of finds have a policy prohibiting such underlying funds from acquiring any securities in reliance on Sections 12(d)(1) (G) or (F). Applicants state that the Affiliated Underlying Funds have adopted such policies. In addition, Applicants state that no Underlying Fund will acquire securities of any other investment company in excess of the limits contained in Section 12(d)(1)(A) of the Act except to the extent that such Underlying Fund (a) receives securities of another investment company or as a result of a plan of reorganization of a company (other than a plan devised for the purpose of evading Section 12(d)(1) of the Act); or (b) acquires (or is deemed to have acquired) securities of another investment company pursuant to exemptive relief from the Commission permitting such Underlying Fund to (i) acquire securities of one or more affiliated investment companies for short-term cash management purposes; or (ii) engage in interfund borrowing and lending transactions.

*Section 17(a) of the Act*

17. Section 17(a) of the Act prohibits any affiliated person or promoter of or principal underwriter for a registered investment company (other than a company of the character described in Section 12(d)(3) (A) and (B)), or any affiliated person of such a person, promoter, or principal underwriter, acting as principal, from knowingly selling any security or other property to such registered company or to any company controlled by such registered company, unless such sale involves solely: (a) securities of which the buyer is the issuer; (b) securities of which the seller is the issuer and which are part of a general offering to the holders of a class of its securities; or (c) securities deposited with the trustee of a unit investment trust or periodic payment plan by the depositor thereof.

18. Section 6(c) of the Act provides that the Commission may, by order upon application, conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision of the Act if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

19. Section 17(b) of the Act provides that the Commission may, by order upon application, exempt a proposed transaction from one or more provisions of Section 17(a) if the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned; the proposed transaction is consistent with the policy of each registered investment company concerned, as recited in its registration statement and reports filed with the Omission; and the proposed transaction is consistent with the general purposes of the Act.

20. Applicants seek relief from the prohbiitions of Section 17(a) of the Act pursuant to Sections 6(c) and 17(b) of the Act to allow the Asset Allocation Funds to purchase the Affiliated Underlying Funds and the Nationwide Fixed Contract.

21. Applicants assert that since the Asset Allocation Funds and the Affiliated Underlying Funds are each advised by NAS, the Asset Allocation Funds and the Affiliated Underlying Funds could be deemed to be affiliated persons of one another by virtue of being under common control of their adviser. Moreover, Applicants state that the Asset Allocation Funds and the Affiliated Underlying Funds may also be deemed to be affiliated persons of one another to the extent that the Asset Allocation Funds own 5% or more of the shares of an Affiliated Underlying Fund. Therefore, purchases by Asset Allocation Funds and the sale by the Affiliated Underlying Funds of their shares to the Asset Allocation Funds could be deemed to be principal transactions between affiliated persons under Section 17(a).

22. Nationwide states that it will issue from its general account a Fixed Contract to NAAT on behalf of each of NAAT's funds. NAS is a wholly owned subsidiary of Nationwide and serves as principal underwriter of the Contracts funded by the Separate Account. Moreover, NAS serves as investment adviser to NAAT, which will purchase the Fixed Contract on behalf of each of NAAT's funds. Applicants submit that the Asset Allocation Funds may be deemed to be affiliated persons of Nationwide to the extent they are advised by NAS, Nationwide's wholly owned subsidiary. Applicants state that any purchases of the Fixed Contract by the Asset Allocation Funds could be deemed to be principal transactions between affiliated persons.

23. Applicants state that they believe that, with respect to the purchase of the Affiliated Underlying Funds and the Fixed Contract, the requested relief is appropriate because the proposed arrangements meet the standards of Section 17(b) of the Act. First, Applicants argue that the terms of the proposed transactions are fair and reasonable and do not involve overreaching. The consideration paid for the sale and redemption of shares of the Affiliated Underlying Funds will be based on the net asset values of the Affiliated Underlying Funds with no sales load. Any investment advisory fee paid to NAS by the Asset Allocation Funds will not be duplicative of the investment advisory fees paid by the Affiliated Underlying Funds. In addition, the Asset Allocation Funds will pay no sales load when purchasing the Fixed Contract and the guaranteed rate on the Fixed Contract will be at least as favorable as the guaranteed rate paid on other similar fixed contracts issued by Nationwide. Also, each Asset

Allocation Fund will be permitted to remove Fund assets from the fixed Contract at any time, without the imposition of a sales charge or market value adjustment. Second, Applicants submit that the proposed transactions will be consistent with the policies of each Asset Allocation Fund. Finally, Applicants argue that the proposed arrangements do not involve overreaching or self-dealing and are consistent with the general purposes of the Act.

**Conditions For Relief**

Applicants agree that the order granting the requested relief shall be subject to the following conditions:

1. Each Asset Allocation Fund and each Affiliated Underlying Fund will be part of the same ''group of investment companies'' as that term is defined in Section 12(d)(1)(G)(ii) of the Act.

2(a). In the case of an Underlying Fund that is not a feeder fund in a ''masterfeeder'' structure, no Underlying Fund will acquire securities of any other investment company in excess of the limits contained in Section 12(d)(1)(A) of the Act, except to the extent that such Underlying Fund (a) receives securities of another investment company as a dividend or as a result of a plan of reorganization of a company (other than a plan devised for the purpose of evading Section 12(d)(1) of the Act); or (b) acquires (or is deemed to have acquired) securities of another investment company pursuant to exemptive relief from the Commission permitting such Underlying Fund to (i) acquire securities of one or more affiliated investment companies for short-term cash management purposes; or (ii) engage in interfund borrowing and lending transactions.

2(b). No Underlying Fund that is a feeder fund in a ''master-feeder'' structure will acquire securities of any other investment company except in conformity with Section 12(d)(1)(E) of the Act. No master fund in such a structure shall acquire securities of any other investment company in excess of the limits contained in Section 12(d)(1)(A) of the Act, except to the extent that such master fund (a) receives securities of another investment company as a dividend or as a result of a plan of reorganization of a company (other than a plan devised for the purpose of evading Section 12(d)(1) of the Act); or (b) acquires (or is deemed to have acquired) securities of another investment company pursuant to exemptive relief from the Commission permitting such master fund to (i) acquire securities of one or more affiliated investment companies for short-term cash management purposes; or (ii) engage in interfund borrowing and lending transactions.

3. No sales load will be charged at the Asset Allocation Fund level or at the Underlying Fund level, including any Unaffiliated Underlying Fund that is a feeder in a ''master-feeder'' structure or any master fund in such a structure. Sales charges or service fees as defined in Section 2830 of the Conduct Rules of the NASD, if any, will only be charged at either the Asset Allocation Fund level or at the Underlying Fund level, but not both. In a situation where an Asset Allocation Fund invests in a feeder fund, the Applicants agree to limit sales charges or service fees to only one level, at the feeder fund, the master fund, or the Asset Allocation Fund level.

4. Before approving any advisory contract pursuant to Section 15 of the Act, the Board of Trustees of an Asset Allocation Fund, including a majority of the Trustees who are not ''interested persons'' as defined in Section 2(a)(19) of the Act, will find that the advisor fees charged under such contract, if any, are based on services provided that are in addition to, rather than duplicative of, services provided under the advisory contract of any Underlying Fund in which the Asset Allocation Funds may invest. This finding, and the basis upon which the finding was made, will be recorded fully in the minute books of such Asset Allocation Fund.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 97–32311 Filed 12–9–97; 8:45 am]

BILLING CODE 8010–01–M

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–39392; File No. SR–Amex–97–38]**

## Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange, Inc. Relating to the Exchange's Warrant Listing Guidelines

December 3, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934,[1] notice is hereby given that on October 22, 1997, the American Stock Exchange, Inc. (''Amex'' or ''Exchange'') filed with the Securities Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The American Stock Exchange, Inc. proposes to amend its Company Guide to revise its warrant listing guidelines. The text of the proposed rule change is available at the Office of the Secretary, the Amex and at the Commission.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in section A, B and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

1. Purpose

Section 105 of the Amex Company Guide provides that the Exchange will not list warrants unless the underlying common stock is listed on either the Amex or the New York Stock Exchange and further provides that the Exchange will evaluate the warrant issuer's listing eligibility using the same financial and distribution guidelines as are applied to the listing of common stock. The Exchange believes that those criteria are unnecessarily high when applied to the listing of warrants. Warrants do not represent a new type of direct claim upon a company's assets or otherwise expose a company to financial risk. Accordingly, the original listing financial guidelines for common stock are not relevant to the listing of warrants and the Exchange proposes instead to list a warrant issue so long as the Company is in good standing on either the Amex or the NYSE, *i.e.*, above the continued listing guidelines (a similar change was previously made to the Exchange's guidelines with respect to the listing of debt securities).

Similarly, the original listing distribution guidelines for common stocks (either 1,000,000 shares/warrant

with at least 400 holders or 500,000 shares/warrants with at least 800 holders) are too high when applied to warrants since warrants are a derivative security and their price discovery is less dependent upon such a high level of liquidity. Nonetheless, the Exchange recognizes that a minimum level of liquidity is necessary in an auction market environment. The Exchange presently lists a preferred stock issued by an Amex or NYSE listed company provided that there are at least 100,000 shares outstanding and believes that this would also be an appropriate guideline for the listing of warrants. The Exchange also recognizes that for a specialist to continue to provide an auction market some minimal level of public float is necessary. Thus, the Amex is proposing that a warrant issue would become subject to delisting if its public float fell below 50,000. This too is the same guideline as is applied to preferred stock issues. These changes will provide the Exchange with greater flexibility in listing warrant issues and the Amex believes that the expanded opportunity for side-by-side trading of stocks and warrants will prove beneficial to the shareholders of exchange listed companies.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)[2] of the Act in general and furthers the objectives of Section 6(b)(5)[3] in particular in that it is designed to promote just and equitable principles of trade, remove impediments to a free and open market and a national market system, and protect investors and the public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The proposed rule change will impose no burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Room in Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to the file number in the caption above and should be submitted by December 31, 1997.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[4]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 97–32231 Filed 12–9–97; 8:45 am]

BILLING CODE 8010–01–M

[2] 15 U.S.C. 78f(b).

[3] 15 U.S.C. 78f(b)(5).

[4] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–39395; File No. SR–CSE–97–12]**

## Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by The Cincinnati Stock Exchange, Inc., Relating to Transaction Credits

December 3, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. § 78s(b)(1) (''Act''), notice is hereby given that on November 13, 1997, The Cincinnati Stock Exchange, Incorporated (''CSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the CSE.[1] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange proposes to amend its schedule of fees in order to provide a transaction credit for Tape B transactions.[2]

**II. Self-Regulatory Organization's Statement of, the Purpose of and Statutory basis for, the Proposed Rule Change**

In its filing with the Commission the CSE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CSE has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant parts of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange is implementing a credit for transactions in all Tape B securities in order to create an incentive for members to trade such securities on the Exchange. The Exchange believes the credit is a logical next step in its efforts to remain the low-cost provider of exchange services in the National Market System. Members will be credited on a pro rata basis, based upon the percentage of tape B transaction market share captured by the Exchange

[1] On November 19, 1997, the Exchange submitted Amendment No. 1 to the filing. *See* letter from Adam W. Gurwitz, Vice President and Secretary, CSE, to Marie Ito, Special Counsel, Division of Market Regulation, Commission, dated November 19, 1997.

[2] ''CTA Network B'' is commonly known as Tape B, and is defined in the Consolidated Tape Association Plan as ''the [Consolidated Tape] System as utilized to make available 'CTA Network B information' (that is, last sale price information related to Network B Eligible Securities).'' The Consolidated Tape Association Plan further defines ''Network B Eligible Securities'' to mean securities ''admitted to dealings on the [American Stock Exchange], [Boston Stock Exchange], [Chicago Board Options Exchange], [Chicago Stock Exchange], CSE, [Pacific Exchange], [Philadelphia Stock Exchange] or on any other exchange, but not also admitted to dealings on [the New York Stock Exchange].'' CTA Plan, at 1–3.

in a given quarter. The new credit is delineated in Exhibit A.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act in general, and furthers the objectives of Section 6(b)(5) in particular in that it is designed to promote just and equitable principles of trade and to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. It is also consistent with Section 6(b)(4) in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among Exchange members by crediting members on a pro rata basis.[3]

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The CSE does not believe that the proposed rule change will impose any inappropriate burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others*

No written comments were solicited in connection with the proposed rule change.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and subparagraph (e)(2) of Rule 19b–4 thereunder because it constitutes or changes a due, fee, or other charge imposed by the Exchange. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filings will also be available for inspection and copying at the principal office of the CSE. All submissions should refer to File No. SR–CSE–97–12 and should be submitted by December 31, 1997.

For the Commission, by the Division of Market Regulation, pursuant to the delegated authority.[4]

**Margaret H. McFarland,**

*Deputy Secretary.*

### Exhibit A

**Proposed Rule Change**

*The Cincinnati Stock Exchange, Incorporated*

Additions are italicized

Rule 11.10 National Securities Trading System Fees

A. Trading Fees.

a.—(1) No Change.

(j) Tape ''B'' Transactions. The CSE will not impose a transaction fee on Consolidated Tape ''B'' securities. *In addition, Members will receive a pro rata transaction credit based on the following schedule:*

| Average quarterly exchange Tape B transaction market share | Percentage of Tape B revenue credited |
|---|---|
| 1–2.99% | 10 |
| 3–4.99% | 25 |
| 5–6.99% | 30 |
| 7% and greater | 40 |

(k)—(n) No Change.

B. Membership Fees.

No Change.

[FR Doc. 97–32310 Filed 12–9–97; 8:45 am]

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[3] The Commission notes that the filing may raise questions concerning payment for order flow. To the extent that it does raise such issues, exchange members should consider any associated disclosure obligations, namely pursuant to Rules 10b–10 and 11Ac1–3 under the Act, 17 CFR 240.10b–10 and 17 CFR 240.11Ac1–3, respectively.

[4] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–39391; File No. SR–MSRB–97–8]**

## Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Interpreatioan of Rule G–38 on Consultants

December 3, 1997.

On November 13, 1997, the Municipal Securities Rulemaking Board (''Board'' or ''MSRB'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') a proposed rule change (File No. SR–MSRB–97–8), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder. The proposed rule change is described in Items I, II, and III below, which Items have been prepared by the board. The Board has designated this proposal as constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the Board under Section 19(b)(3)(A) of the Act, which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

## I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Board is filing herewith a notice of interpretation concerning Rule G–38 on consultants (hereafter referred to as ''the proposed rule change''). The proposed rule change is as follows:

**Rule G–38 Questions and Answers**

**Bank Affiliates and Definition of Payment**

**Q:** A bank and its employees communicate with an issuer on behalf of an affiliated dealer to obtain municipal securities business for that dealer. In return, the bank and its employees receive certain ''credits'' from the dealer. These credits, which do not involve any direct or indirect cash payments from the dealer to the bank or its employees, are used for internal purposes to identify the source of business referrals. Are the credits considered a ''payment'' under rule G–38 thereby requiring the dealer to designate the bank or its employees as consultants and comply with the requirements of rule G–38?

**A:** Rule G–38 defines a consultant as any person used by a dealer to obtain or retain municipal securities business through direct or indirect communication by such person with an issuer on behalf of the dealer where the communication is undertaken by the

[1] 15 U.S.C. 78s(b)(1).

person in exchange for, or with the understanding of receiving, **payment** from the dealer or any other person.[2] The term payment, as used in rule G–38, means any gift, subscription, loan, advance, or deposit of money or **anything of value.** The absence of an immediate transfer of funds or anything of value to an affiliate or individual employed by the afilitate would not exclude the credits from the definition of payment if such credits eventually (*e.g.,* at the end of the fiscal year) result in compensation to the affiliate or inficiual employed by the affiliate for referring municipal securities business to the dealer. In this regard, the compensation may be in the form of cash (*e.g.,* a bonus) or non-cash. In either case, if the dealer or any other person [3] eventually gives anything of value (*i.e.,* make a ''payment'') to the affiliate or individual based, even in part, on the referral, then the affiliate or individual is a consultant for purposes of rule G–38 and the dealer must comply with the various requirements of the rule. For additional guidance in this area, you may wish to review Q&A number 6 and 7 (dated February 28, 1996) in the MSRB Manual following Rule G–38, as well as Q&A number 4 (dated December 7, 1994) in the MSRB Manual following Rule G–37.

* * * * *

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Board included statements concerning the purposed of and basis for the propose rule change and discussed any comments it received on the proposed rule change. The texts of these statements may be examined at the places specified in Item IV below. The Board has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

### *A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

On January 17, 1996, the Commission approved Board Rule G–38 on consultants.[4] The Board adopted the rule because it was concerned about dealers' increasing use of consultants to obtain or retain municipal securities business, notwithstanding the requirements of Rule G–37[5] on political contributions and prohibitions on municipal securities business, Rule G–20[6] on gifts and gratuities, and Rule G–17[7] on fair dealing. Rule G–38 requires dealers to disclose information about their consultant arrangements to issuers and the public. Recently, the Board has received inquiries from market participants concerning the definition of payment, as used in Rule G–38, and whether bank affiliates and their employees may, under certain circumstances, be deemed consultants for purposes of the rule. In order to assist the municipal securities industry and, in particular, brokers, dealers and municipal securities dealers in understanding and complying with Rule G–38, the Board has determined to publish this third notice of interpretation which sets forth, in question-and-answer format, general guidance on Rule G–38.[8] The Board will continue to monitor the application of Rule G–38, and, from to time, will publish additional notices of interpretations, as necessary.

The Board believes the proposed rule change is consistent with Section 15B(b)(2)(C) of the Act.[9]

### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Board does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act, because it would apply equally to all brokers, dealers and municipal securities dealers.

### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments were neither solicited nor received.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for commission action

The Board has designated this proposal as constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the Board under Section 19(b)(3)(A) of the Act and Rule 19b–4(e) thereunder, which renders the proposal effective upon receipt of this filing by the Commission.[10]

At any time within sixty days of the filing of this proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the Board's principal offices. All submissions should refer to File No. SR–MSRB–97–8 and should be submitted by December 31, 1997.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[11]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 97–32230 Filed 12–9–97; 8:45 am]

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[2] Municipal finance professionals and any person whose sole basis of compensation is the actual provision of legal, accounting or engineering advice services or assistance are expected from the definition of consultant.

[3] The Securities Exchange Act of 1934 (the ''Act'') defines the term ''person'' as a ''natural person, company, government, or political subdivision, agency, or instrumentality of a government.'' Board rule D–1 provides that unless the contest otherwise specifically requires, the terms used in Board rules shall have the same meanings as set forth in the Act.

[4] Securities Exchange Act Release No. 36727 (Jan. 17, 1996); 61 FR 1955 (Jan. 24, 1996). The rule became effective on March 18, 1996. *See also MSRB Manual,* General Rules, Rule G–38 (CCH) ¶ 3686.

[5] *MSRB Manual,* General Rules, Rule G–37 (CCH) ¶ 3681.

[6] *MSRB Manual,* General Rules, Rule G–20 (CCH) ¶ 3596.

[7] *MSRB Manual,* General Rules, Rule G–17 (CCH) ¶ 3581.

[8] *See* Securities Exchange Act Release No. 36950 (March 11, 1996); 61 FR 10828 (March 15, 1996) and Securities Exchange Act Release No. 37997 (Nov. 29, 1996); 61 FR 64781 (Dec. 6, 1996).

*See also* MSRB Reports Vol. 16, No. 2 (June 1996) at 3–5; and Vol. 17, No. 1 (Jan. 1997) at 15.

[9] Section 15B(b)(2)(C) states in pertinent part that the rules of the Board ''shall be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.''

[10] 17 CFR 240.19b–4(e)(1).

[11] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–39394; File No. SR–NYSE–97–31]**

## Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the New York Stock Exchange, Inc. To Amend Its Rule 500 Relating to Voluntary Delistings by Listed Companies

December 3, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 17, 1997, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been substantially prepared by the NYSE.[3] On December 3, 1997, the NYSE submitted Amendment No. 1 to the proposed rule change.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to replace existing NYSE Rule 500 with a new Rule 500 to revise the procedures a NYSE-listed company must follow to delist its securities from the Exchange. The text of the proposed rule change, as amended, is available at the Office of the Secretary, the NYSE, and at the Commission.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] With the consent of the NYSE, Commission staff has incorporated several technical changes to the Exchange's description of its proposal. Telephone conversation between Richard Bernard, Executive Vice President and General Counsel, NYSE, and Richard Strasser, Assistant Director, Division of Market Regulation, Commission, on November 26, 1997.

[4] *See* Letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Jonathan G. Katz, Secretary, Commission, dated December 1, 1997 (''Amendment No. 1''). In Amendment No. 1, the NYSE amended the proposal to require an issuer proposing to delist its securities from the Exchange to: (1) provide the Exchange with written notice of the proposed delisting at the same time the issuer provides such notice to its shareholders; and (2) send the Exchange a copy of the delisting application the issuer submits to the Commission. Commission staff has incorporated the proposed changes set forth in Amendment No. 1 into the NYSE's description of its proposal.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NYSE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NYSE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The purpose of the proposed rule change, as amended, is to revise the procedures an NYSE-listed company must follow to delist its securities from the Exchange. Currently, Rule 500 requires supermajority shareholder approval before a listed company can delist its securities: holders of 66⅔ percent of the security must approve the delisting, and ten percent or more of the individual holders cannot object to the delisting.

The Exchange adopted existing Rule 500 in the 1930's as a corporate governance safeguard, when delisting from the NYSE generally resulted in the loss of a public market for a security. That is no longer the case. Recognizing the changed corporate law and market circumstances, the new Rule would substitute alternative delisting procedures depending on the nature of the security.

- For stock of a domestic issuer, the Rule would require the issuer to obtain the approval of (1) the company's audit committee and (2) a majority of the company's full board of directors before the issuer could apply for delisting. Requiring approval by the independent directors constituting the audit committee, as well as approval of a majority of the full board of directors (not just of a quorum of directors at a particular meeting), would provide shareholders with protections that the Exchange believes would help offset the loss of the current shareholder voting requirement for delisting.

After receiving approval of the audit committee and board, the issuer would be required to provide shareholders with at least 45 but no more than 60 days' written notice of the proposed delisting. The notice must include a statement that the issuer complied with the requirements discussed in the paragraph above. This notice and waiting period would give shareholders who object to the proposed delisting an opportunity to communicate their views to the issuer's management and directors before the delisting becomes effective. It also would assure a reasonable period of time for shareholders to liquidate their positions in a stock in an orderly manner should they decide that they did not want to continue to own the security after delisting from the Exchange. At the same time, the 60-day cut-off assures that the ''lame-duck'' status of the stock listing would not persist to the point of impairing the ability of the Exchange to maintain a fair and orderly market in the stock. The issuer must contemporaneously send to the Exchange a copy of the written notice sent to shareholders.

- For stock of a non-U.S. issuer, the Rule simply would require the issuer to obtain board approval before the issuer could apply to the Commission for delisting, leaving to home country law the determination of the requisite vote. The issuer also would need to provide holders with reasonable notice of its intention to delist the securities. The Supplementary Material to the Rule, discussed below, provides further details on the nature of this notice.
- For bonds of both domestic and non-U.S. issuers, an issuer could apply to delist bonds subject only to board approval. The Rule does not require that bond holders be notified of the proposed delisting. The absence of the more rigorous requirement that pertains to stock reflects the fact that the Exchange generally is not the primary market for bonds.

New Supplementary Material to the Rule explains how these procedures would operate.

- Supplementary Material .10 cross-references NYSE Rule 4, which defines the term ''stock,'' and Rule 5, which defines the term ''bond.'' Generally, the stock delisting procedures would supply to securities ''classified for trading as stocks,'' including common stock, preferred stock and certain derivative instruments, such as equity-linked debt securities that trade pursuant to the stock trading rules. The bond delisting procedures would apply to fixed income products traded on the Bond Floor or through the Automated Bond System.
- Supplementary Material .20 provides guidance as to the manner in which non-U.S. issuer must provide notice to shareholders regarding the delisting of their stock. Non-U.S. issuers would be required to send written notice of the delisting to (i) shareholders that have a U.S. address or (ii) shareholders that own the stock in the form of American Depositary Receipts. For other holders, the issuer could follow home-country practice, which, for example, may allow for notice through publication or other means.
- Supplementary Material .30 cross-references NYSE Rule 465, which governs the transmission of reports and other materials by member organizations to beneficial owners who hold securities in ''street'' name. Supplementary Material .30 notes that, pursuant to Rule 465, both domestic and non-U.S. issuers must request that member organizations transmit the written notice of the proposed delisting as required by Rule 500 and Supplementary Material .20 to beneficial stockholders.

• Supplementary Material .40 discusses the interplay between Rule 500 and the issuer's application to the SEC to withdraw the security from listing. Pursuant to Commission Rule 12d2–2(d) under the Exchange Act, an issuer may apply to withdraw the security from listing after complying with the requirements of the Rule. With respect to the delisting of stock, the proposed date of delisting in the application to the Commission must be the same date specified in the notice to shareholders. The issuer must contemporaneously send to the Exchange a copy of the application submitted to the Commission.

• Supplementary Material .50 parallels a provision in Rule 499 (governing Exchange-initiated delistings), which provides that, when reviewing the listing status of one class of securities, the Exchange will review the appropriateness of the continued listing of other classes of the issuer's securities. Factors the Exchange will consider in such a review under Rule 500 include, but are not limited to, the pricing relationship between the securities being delisted and the other security, and the ability of the Exchange to make a market in the remaining securities. For example, it is unlikely the Exchange would delist the common stock of an issuer that delists bonds. On the other hand, it is likely that the Exchange would delist the warrants of an issuer that delists its common stock.

2. Statutory Basis

The Exchange believes the proposed rule change, as amended, is consistent with the requirements of Section 6(b)(5) of the Act,[5] which requires that the rules of the Exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange believes that the proposal does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties. However, in a process initiated at the beginning of May 1997, the Exchange did consult with a number of its Board and advisory committees, pension funds and other constituents in developing the Rule. The NYSE represents that these constituents overwhelmingly supported the revision of existing Rule 500, rather than its elimination.

According to the NYSE, the most controversial issue among the constituents was whether the requirement for a shareholder vote should be maintained, albeit with a simple majority vote. The great majority of those surveyed viewed delisting as a matter within the purview of the business judgment of a company's board of directors. These constituents believed that the Exchange could address the concerns underlying the desire for a shareholder vote by requiring (1) a higher-than-normal board vote, (2) the concurrence of independent directors, and (3) provision to shareholders of notice of a proposed delisting.

The Exchange believes that the text of the Rule reflects the reconciliation and incorporation of the comments and suggestions that the exchange received from these constituents.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. by order approve such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing. In addition to any other issues that the public may wish to address, the Commission specifically requests comments on the following questions:

Are the shareholder notification procedures required under the terms of the proposal necessary to the delisting process?

What are the costs involved with complying with the requisite shareholder notifications?

Will issuers' costs arising from the requisite shareholder notification create a disincentive to delist from the Exchange?

Is there an acceptable alternative means to providing shareholder notification, such as through media publication?

Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–97–31 and should be submitted by December 31, 1997.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 97–32229 Filed 12–9–97; 8:45 am]

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[5] 15 U.S.C. 78f(b)(5).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–39393; File No. SR–Phlx–97–51]**

## Self-Regulation Organizations; Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to the Allocation of Options Trades

December 3, 1997.

Pursuant to Sections 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 22, 1997, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Phlx, pursuant to Rule 19b–4 of the Act, proposes to provide that the seller or largest participant to an option transaction is responsible for allocating an executed trade. Specifically, the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Exchange proposes to amend two Floor Procedure Advices (''Advices''): F–2, Allocation, Time Stamping, Matching and Access to Matched Trades; and F–12, Responsibility for Assigning Participation.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in sections (A), (B), and (C), below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

*a. Advice F–2*

Currently, Advice F–2 states that it is the duty of the largest participant in an options transaction to both match and time stamp the order tickets involved. There is currently no specific provision for who allocates options trades among trade participants. The purpose of the proposed rule change to Advice F–2 is to assign the responsibility or properly allocating option trades to the largest participant (or seller)[3] involved in the trade. Violations of this new responsibility will be subject to the existing fine schedule accompanying Advice F–2. Paragraphs (b) concerning ticket preservation and (c) concerning member access to matched trades, of Advice F–2, remain unchanged.

Trade allocation includes the determination, based on existing rules, policies and practices, as to who is considered to be on a bid/offer, who participants in a trade and for what size. The Exchange believes that permitting the largest participant, which normally will be the Floor Broker who represents the original order in the trading crowd, to allocate trade participation should render the process more efficient and therefore accelerate execution reporting.

As previously stated, existing Exchange rules do not clearly address the process of, or parties responsible for, ensuring proper options trade allocation. The practice in most options crowds is that specialists announce trade splits by saying to the trading crowd, ''You did 10, you did 5,'' etc. This practice may differ, especially where a specialist unit is not involved in a trade, or where a great deal of trading and quote activity renders specialist allocating trades impractical. In these situations, Floor Brokers have assisted in this function, consistent with their duty to match and time stamp the trade, as well as their duty to ensure the best execution of orders.[4]

In determining how to assign this responsibility, the current duty of the largest participant (or seller) to match and time stamp the trade was decisive in determining who allocates option trades. Extending this responsibility to the largest participant (or seller)[5] is a logical extension of the current requirements of Advice F–2. In adopting and amending this Advice, the intent has been to facilitate prompt and accurate trade reporting.[6]

*b. Advice F–12.*

The purpose of the proposed rule change to Advice F–12 is to extend its requirements regarding how trades are allocated to the equity/index options floor. Currently, Advice F–12 only applies to foreign currency options trading. In addition, Advice F–12 is proposed to be amended to only detain in the crowd actual trade participants and simplify ticket submission requirements.

Specifically, Advice F–12 requires that trade participants: (a) Must confirm and immediately inform the largest participant of their contra-side participation; (b) should not leave the crowd absent such confirmation; (c) should not submit tickets absent participation; and (d) must handle disputes properly. The Phlx believes that the extension of Advice F–12 to equity/index options trading should improve the certainty of trade allocation and maintain order during the allocation process. This is consistent with the original intent of Advice F–12 to facilitate the orderly operation of the option floor, especially for trades involving a number of market participants.[7]

The Phlx also believes that the proposed amendments to Advice F–12 will bolster its effectiveness in controlling the trade allocation process. Under the proposed amendments, no one who has participated in the trade would be allowed to leave the crowd until the level of his/her participation in the trade has been confirmed by the largest participant. Previously, this obligation also applied to those who *believed they may have* participated in a trade. This change is intended to require only those who actually participated in a trade to remain in the trading crowd to confirm their participation in the trade. The Phlx states that the language concerning belief was difficult to administer and did not capture violations necessary to improve the post-trade process.

Further, Advice F–12 currently provides that no person in the crowd shall submit a ticket for matching on a trade when that person has or should have grounds to believe that he is not due participation in the trade. The Phlx asserts that by deleting the reference to ''belief,'' the proposal is designed to simplify trade ticket submission, and as a result, establish the practice that a person who did not participate in a trade should not submit a ticket. Thus, a violation of Advice F–12 may result from submitting a ticket where no participation is due, even though the participant believed he/she participated. As cited by the Commission in the original approval of Advice F–12, it is reasonable to require trade participants to notify other parties of their participation levels and to resolve those levels at such time.[8] The Exchange believes the proposed amendments are consistent with those goals, because they continue to facilitate the prompt determination of participation levels.

Advice F–12 currently contains a fine schedule, which is proposed to apply to the entire options floor. The proposal thus amends the Exchange's minor rule violation enforcement and reporting plan (''minor rule plan''),[9] by amending the text of both Advices, as well as by extending the application of Advice F–12 to the equity/index options floor. The complete text of the proposed rule change may be examined at the places specified in Item IV below.

2. Basis

For these reasons, the proposed rule change is consistent with Section 6 of

[3] The seller has the responsibility only when there are two parties to a trade. When there are multiple participants, the largest participant is responsible for allocating the trade.

[4] *See* Phlx Rule 1063.

[5] *See* note 3, *supra.*

[6] *See e.g.*, Securities Exchange Act Release No. 33512 (January 24, 1994) 59 FR 4759 (February 1, 1994).

[7] Securities Exchange Act Release No. 29580 (August 16, 1991) 56 FR 41876 (August 23, 1991).

[8] *Id.*

[9] The Phlx's minor rule plan, codified in Phlx Rule 970, contains floor procedure advices, such as Advice F–2, with accompanying fine schedules. Rule 19d–1(c)(2) authorizes national securities exchanges to adopt minor rule violation plans for summary discipline and abbreviated reporting; Rule 19d–1(c)(1) requires prompt filing with the Commission of any final disciplinary actions. However, minor rule violations not exceeding $2,500 are deemed not final, thereby permitting periodic, as opposed to immediate, reporting.

the Act in general, and in particular, with Section 6(b)(5), in that it is designed to promote just and equitable principles of trade, prevent fraudulent and manipulative acts and practices, as well as to protect investors and the public interest, by facilitating prompt and accurate trade processing and reporting.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Phlx does not believe that the proposed rule change will impose any inappropriate burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others*

No written comments were either solicited or received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days or such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Phlx consents, the Commission will:

(A) By order approve such proposed rule change, or,

(B) Institute proceedings to determine whether the proposed rule change should disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–97–51 and should be submitted by December 31, 1997.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[10]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 97–32309 Filed 12–9–97; 8:45 am]

BILLING CODE 8010–01–M

## DEPARTMENT OF STATE

**[Public Notice 2660]**

### Bureau of Oceans and International Environmental and Scientific Affairs; United States Man and the Biosphere Program: Request for Proposals for the Tropical Ecosystems Directorate

The Tropical Ecosystems Directorate (TED) of the U.S. Man and the Biosphere Program (U.S. MAB) announces a call for proposals to support applied research on the management, harvesting, utilization and marketing of tropical forest resources, both timber and nontimber, in the tri-national Mayan forest of Mexico, Belize and Guatemala.

A small number of grants of $1000 to $3500 US each, will be awarded in 1998. Persons interested in applying for these grants are encouraged to first obtain a copy of the TED core project description from the U.S. MAB Secretariat (Roger E. Soles), OES/ETC/MAB, U.S. Department of State, Washington, D.C. 20522–4401. Tel. (202) 776–8318, Fax. (202) 776–8367.

**Funding Objectives**

U.S. MAB/TED funding should assist research teams to add a national researcher to their effort as well as to: better integrate conservation and sustainable development; add a particular discipline to an ongoing research project; or explore the application of ongoing site-specific research to an additional site in the Maya Tri-National region. U.S. MAB/TED funding will not be provided for planning purposes.

**Focal Issues**

The TED recognizes that strategies to sustainably conserve the Mayan forest must address the needs of the rural communities that live in the forest and use its wild resources. Lack of an adequate knowledge base on the ecology and management of these resource species, nondestructive harvesting methods, and appropriate marketing and commercialization of these products has negative impacts on the forest, on the resource base, and on local economies. For this reason we continue to invest in the development of new knowledge in these fields through small grants. In order to ensure that this new knowledge will be integrated into ongoing resource management and utilization activities, and to enhance local capacity to continue to produce new information as it is needed, our applied research program focuses on the integration of students or recent graduates (at the Bachelor or Master level), from the three countries into relevant projects led by respected researchers in these fields and linked with NGO's, and preferably local communities, in the region.

**Content Requirements and Deadlines for Proposals**

Persons interested should submit a one to two page proposal by February 27, 1998. Each proposal should have: a title page, a one page synopsis of the existing research project, up to five pages detailing the proposed use of U.S. MAB/TED funds that would be complementary to the TED core program, and a one-page budget with justification.

The U.S. MAB/TED will make final decisions by April 6, 1998.

No funds are available for institutional overhead. Only direct costs can be supported.

Funds will be committed to the managing institutions identified in the proposals during May 1998.

**Evaluation and Review Process**

Because of limited available funding, U.S. MAB/TED will give the greatest preference to those proposals that directly complement the objectives of the directorate's core program. Proposals will be evaluated for the intrinsic merit of the research or activity, its policy relevance, applicability to promoting sustainable use of tropical forest resources in the Maya Tri-National Region, and the quality and demonstrated productivity of the principals.

Principals will receive from the U.S. MAB Secretariat copies of all U.S. MAB/TED review evaluations of their proposal and a written notification of the directorate's decision on their project.

**Submission of Proposals**

Proposals may be submitted in Spanish or English to U.S. MAB Secretariat, OES/ETC/MAB, Room 107, SA–44C, U.S. Department of State, Washington, DC 20522–4401.

[10] 17 CFR 200.30–3(a)(12).

Individuals choosing to submit their proposals by Express Mail, Federal Express, UPS, etc. must use the following address: U.S. MAB Secretariat, Room 107, 2430 E Street NW, Washington, DC 20520.

Dated: November 28, 1997.

**Roger E. Soles,**

*Executive Director, U.S. Man and the Biosphere Program, Office of Ecology and Terrestrial Conservation.*

[FR Doc. 97–32226 Filed 12–9–97; 8:45 am]

BILLING CODE 4710–09–P

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

### Reports, Forms and Recordkeeping Requirements, Agency Information Collection Activity Under OMB Review

**AGENCY:** Office of the Secretary, DOT.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for approval. The ICR describes the nature of the information collection and its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published in 62 FR 43416, August 13, 1997.

**DATES:** Comments must be submitted on or before January 9, 1998.

**FOR FURTHER INFORMATION CONTACT:** Sylvia Barney, (202) 366–6680 and refer to the OMB Control Number.

**SUPPLEMENTARY INFORMATION:**

**Federal Transit Administration (FTA)**

*Title:* 49 U.S.C Section 5310-Capital Assistance Program for Elderly Persons and Persons with Disabilities and Section 5311-Nonurbanized Area Formula Program.

*Type of Request:* Reinstatement, without change, of a previous approved collection for which approval has expired.

*OMB Control Number:* 2132–0500.

*Form(s):* N/A.

*Affected Public:* State and local government, business or other for-profit institutions, non-profit institutions, and small business organizations.

*Abstract:* The Capital Assistance Program for Elderly Persons and Persons with Disabilities provides financial assistance for the specialized transportation service needs of elderly persons and persons with disabilities. The program is administered by the States and may be used in all areas, urbanized, small urban, and rural. The Nonurbanized Area Formula Program provides financial assistance for the provision of public transportation services in nonurbanized areas and this program is also administered by the States. 49 U.S.C. Sections 5310 and 5311 authorize FTA to review applications for federal financial assistance to determine eligibility and compliance with statutory and administrative requirements. Information collected during the application stage includes the project budget, which identifies funds requested for project implementation; a program of projects, which identifies subrecipients to be funded, the amount of funding that each will receive, and a description of the projects to be funded; the project implementation plan; the State management plan; a list of annual certifications and assurances; and public hearings notice, certification and transcript. The applications must contain sufficient information to enable FTA to make the findings required by law to enforce the program requirements. Information collected during the project management stage includes an annual financial status report, an annual program status report, and pre-award and post-delivery audits. The annual financial report and program status report provide a basis for monitoring approved projects to ensure timely and appropriate expenditure of federal funds by grant recipients.

*Estimated Annual Burden Hours:* 11,370.

**ADDRESSES:** Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention FTA Desk Officer.

Comments are Invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on December 3, 1997.

**Vanester M. Williams,**

*Clearance Officer, United States Department of Transportation.*

[FR Doc. 97–32262 Filed 12–9–97; 8:45 am]

BILLING CODE 4910–62–P

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

### Reports, Forms and Recordkeeping Requirements Agency Information Collection Activity Under OMB Review

**AGENCY:** Office of the Secretary, DOT.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 3501, *et seq.*) this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and it's expected cost and burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published in 62 FR 41462, August 1, 1997.

**DATES:** Comments on this notice must be received on or before January 9, 1998.

**FOR FURTHER INFORMATION CONTACT:** Jack Schmidt, Office of Aviation and International Economics, Office of the Assistant Secretary for Aviation and International Affairs, Office of the Secretary, U.S. Department of Transportation, 400 Seventh St. SW, Washington, DC 20590 at (202) 366–5420 or (202) 366–7638 (FAX).

**SUPPLEMENTARY INFORMATION:**

**Office of the Secretary**

*Title:* Information Collection of Data on Passenger Travel by Air.

*OMB Control Number:* 2105–0535.

*Affected Public:* All U.S. airlines providing scheduled passenger service and all computer reservations systems (CRSs) operating in the United States.

*Abstract:* The requested extension of the information collection contained in approved control number 2105–0535 covers the data necessary to complete the Study of Rural Air Fares that was required by the Federal Aviation Administration Reauthorization Act of 1996 (Pub. L. 104–264). This study, among other things, was to analyze air fares paid between small communities and large hub airports with fares between large hub airports.

*Need:* Currently, DOT collects air fare data from certain air carriers as part of the *Passenger Origin and Destination Survey* (''Survey''). This Survey is based on a ten percent sample of passenger tickets and is reported to the Department on a quarterly basis by the large certificated air carriers. In the course of analyzing these data with reference to the small communities, the Department has tentatively concluded that because of the small size of the sample and the absence of smaller carriers from the database, the current data are unrepresentative and inadequate for providing proper analysis. The Department is therefore developing an alternative database to meet its needs.

The Department is requiring airlines and CRSs to provide these data. In order to minimize the burden of providing these data, the Department has suggested the use of the Ticket Control Number (TCN) files or similar data sources. In the process of making reservations and ticketing airline passengers, airlines and CRSs electronically record most transactions in TCN files for various accounting, reconciliation and control purposes. Each TCN file contains approximately 150 individual data items including the data elements of carrier identification, passenger itinerary and fare needed by the Department. Under a current data interchange program, most airlines and CRSs routinely submit the TCN data to the Airline Tariff Publishing Company (ATPCO). The Department believes that these files, as submitted to ATPCO, provide an ideal source of the type of comprehensive data that it is seeking. To the extent that airlines do not use CRSs for reservations, the Department is taking whatever steps are necessary to provide as complete a database as possible.

*Estimated Annual Burden Hours:* 888.

Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW, Washington, DC 20503, Attention DOT Desk Officer.

Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on December 3, 1997.

**Vanester M. Williams,**

*Clearance Officer, United States Department of Transportation.*

[FR Doc. 97–32263 Filed 12–9–97; 8:45 am]

BILLING CODE 4910–62–P

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

### Privacy Act of 1974: Systems of Records

**AGENCY:** Office of the Secretary, DOT.

**ACTION:** Notice.

**SUMMARY:** DOT intends to establish a new system of records under the Privacy Act of 1974 and to exempt it from certain provisions of the Act.

**DATES:** January 20, 1998.

**FOR FURTHER INFORMATION CONTACT:** Crystal M. Bush at (202)366–9713 (Telephone), (202)366–7066 (Fax), crystal.bush@ost.dot.gov (Internet Address).

**SUPPLEMENTARY INFORMATION:** The Department of Transportation systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the above mentioned address.

**SYSTEM NUMBER:**

DOT/CG 588.

**SYSTEM NAME:**

Marine Safety Information System (MSIS).

**SECURITY CLASSIFICATION:**

MSIS is unclassified, sensitive.

**SYSTEM LOCATION:**

United States Coast Guard (USCG), Operations Systems Center, 175 Murrall Drive, Martinsburg, WV 25401.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Individuals with established relationship(s)/association to vessels or facilities that are state-numbered and/or titled and U.S. Coast Guard-documented, and that are included in the Marine Safety Information System (MSIS). Specifically, owners or agents of such vessels, as well as lienholders.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

a. Records containing vessel identification information and vessel characteristics on state-numbered and/or titled vessels or Coast Guard-documented vessels including: vessel name (if Coast Guard-documented), make of vessel or name of vessel builder, manufacturer year/year vessel built, vessel model year, title number, Coast Guard official number, certificate of number assigned by the state including expiration date, hull identification number, length of vessel, type of vessel, hull type, propulsion type, fuel type, primary use, endorsements (if Coast Guard documented), and hailing port name endorsements (if Coast Guard documented).

b. Records containing personal information including: name of each owner, address of principal place of residence of at least one owner, mailing address if different from the principal place of residence, and either an owner's social security number, date of birth and driver's license number, or other individual identifier. If a vessel owner is a business, the business address and taxpayer identification number will be included.

c. Records containing lienholder and insurance information including: name of lienholder, and city and state of principal place of residence or business of each lienholder.

d. Records containing law enforcement information including: law enforcement status code (stolen, recovered, lost, destroyed, or abandoned), law enforcement hold, reporting agency, originating case number, MSIS user identification, incident location, last sighted date/time/location, law enforcement contact and phone number, and hours of operations.

e. Records containing vessel registration information including: registration and, if applicable title number including effective and expiration date, issuing authority, and, for Coast Guard documented vessels, the official number.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

33 U.S.C. 1228; 46 U.S.C. 2103, 6101, 6102, 6307(c), 6301, 7101, 7309, 3301, 3714, 3717.

**PURPOSE(S):**

The purpose of MSIS is to establish a system of records to build safety performance histories of vessels, marine facilities, involved parties, and hazardous cargoes. These histories can be used in analysis of safety degradation patterns and equipment failures, and to focus and redirect marine safety activities and resources. MSIS collects selected information on commercial and/or documented vessels operating in U.S. waters. MSIS assists in identification and recovery of stolen vessels, deter vessel theft and fraud, and other purposes relating to the ownership

of vessels. The data are used for the purposes described under the ''Routine uses of records maintained in the system, including categories of users and the purposes of such uses'' heading in the enclosed copy of the system notice prepared for publication in the **Federal Register**.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

a. Federal, state, local and international law enforcement officials for law enforcement purposes including the recovery and return of stolen property and to deter vessel theft, fraud, and pollution. International organizations include International Maritime Organization (IMO), foreign governments for Port State Control, foreign governments for marine casualties, and civil penalty respondents.

b. Federal and state numbering and titling officials for the purposes of tracking, registering and titling vessels.

c. Disclosure may be made to agency contractors who have been engaged to assist the agency in the performance of a contract service or other activity related to this system of records and who need to have access to the records in order to perform the activity. Recipients shall be required to comply with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a.

d. See DOT Prefatory Statement of General Routine Uses.

**DISCLOSURE TO CONSUMER REPORTING AGENCIES:**

Not applicable.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Storage of all records is in an automated database operated and maintained by the U.S. Coast Guard.

**RETRIEVABILITY:**

Records are retrieved by:

a. Vessel hull identification number (HIN).

b. State certificate of number.

c. U.S. Coast Guard official number.

d. USCG vessel name and hailing port.

e. Vessel owner or business name.

f. Interested parties social security number or alternate identifier (e.g., DOB, driver's license number, or taxpayer identification number).

g. Case number.

**SAFEGUARDS:**

The MSIS falls under the guidelines of the United States Coast Guard Operations System Center (OSC) in Martinsburg, WV. This computer facility has its own approved System Security Plan, which provides that:

a. The system is maintained in a secure computer room with access restricted to authorized personnel only.

b. Access to the building must be authorized and is limited.

c. MSIS supports different access levels for fields in the same record. These levels allow different classes of users access to specific information as governed by Federal privacy laws.

d. MSIS controls access by requiring that users provide a valid account name and password. MSIS contains a function that tracks system usage for other authorized users. MSIS requires users to change access control identifiers at six month intervals. The U.S. Coast Guard operates the MSIS in consonance with Federal security regulations, policy, procedures, standards and guidance for implementing the Automated Information Systems Security Program.

e. Only authorized DOT and authorized U.S. Government contractors conducting system maintenance may access MSIS records.

f. Access to records are password protected and the scope of access for each password is limited to the official need of each individual authorized access.

**RETENTION AND DISPOSAL:**

a. Records of active cases are retained until they become inactive; inactive cases are archived. Disposition of records is pending and will be determined at a later date. Records will be selected to be archived into an off-line file for any vessel that has been inactive for a period of 10 years. A vessel is inactive when the State number and/or Coast Guard Document have expired with the exception of the vessels that have a law enforcement hold and vessels with a law enforcement status of stolen.

b. Daily backups shall be performed automatically. The backups will be comprised of weekly full backups followed by daily incremental backups; a log of transactions is maintained daily for recovery purposes.

c. Copies of backups are stored at an off-site location.

**SYSTEM MANAGER(S) AND ADDRESS:**

Department of Transportation, United States Coast Guard Headquarters, Information Resource Division, System Support Division (G-MRI–2), 2100 2nd Street, SW., Washington, DC 20593–0001.

**NOTIFICATION PROCEDURE:**

Submit a written request noting the information desired and for what purpose the information will be used. The request must be signed by the individual or his/her legal representative. Send the request to: USCG Headquarters, Commandant (G-SII), 2100 2nd Street, SW., Washington, DC 20593–0001.

**RECORD ACCESS PROCEDURES:**

Same as Notification Procedures.

**CONTESTING RECORD PROCEDURES:**

Same as Notification Procedures.

**RECORD SOURCE CATEGORIES:**

All information entered into the MSIS is gathered from the Coast Guard in the course of normal routine.

**SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:**

Portions of this system of records may be exempt from disclosure under the provisions of 5 U.S.C. 552a (k)(2). However, in specific cases where maintenance of information results in the denial of a right, privileges or benefits to which the individual is entitled, the information will be released in accordance with section (k)(2). This provides in part that material compiled for law enforcement purposes may be withheld from disclosure to the extent the identity of the source of the information would be revealed by disclosing the investigatory record, and the source has received an express promise that his/her identity would be held in confidence. Additionally, material received prior to 27 September 1974 will be withheld, if the source received an implied promise that his/her identity would be held in confidence.

Dated: December 4, 1997.

**Eugene K. Taylor, Jr.,**

*Office of the Chief Information Officer, U.S. Department of Transportation.*

[FR Doc. 97–32267 Filed 12–9–97; 8:45 am]

**BILLING CODE 4910–62–P**

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

**[CGD 97–075]**

### Agency Information Collection Activities Under OMB Review

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995, the U.S. Coast Guard intends to request

renewal for one Information Collection Request (ICR). The ICR concerns vessels response plans, facility response plans, shipboard oil pollution emergency plans, and additional requirements for Prince William Sound, Alaska. Before submitting the ICR package to the Office of Management and Budget (OMB), the U.S. Coast Guard is asking for comments on the collection as described below.

**DATES:** Comments must be received on or before February 9, 1998.

**ADDRESSES:** You may mail comments to Commandant (G–SII–2), U.S. Coast Guard Headquarters, Room 6106 (Attn: Barbara Davis), 2100 Second St, SW, Washington, DC 20593–0001, or deliver them to the same address between 8:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–2326. The comments will become part of this docket and will be available for inspection and copying by appointment at the above address.

**FOR FURTHER INFORMATION CONTACT:** Barbara Davis, U.S. Coast Guard, Office of Information Management, telephone (202) 267–2326.

**SUPPLEMENTARY INFORMATION:**

### Request for Comments

The U.S. Coast Guard encourages interested persons to submit written views, comments, data, or arguments. Persons submitting comments should include their names and addresses, identify this Notice and the specific ICR to which each comments applies, and give reasons for each comments. The U.S. Coast Guard requests that all comments and attachments be submitted in an unbound format no larger than 8½ by 11 inches suitable for copying and electronic filing. If that is not practical, a second copy of any bound material is requested. Persons desiring acknowledgement that their comments have been received should enclose a stamped, self-addressed post card or envelope.

Interested persons can receive copies of the complete ICR by contacting Ms. Davis where indicated under **ADDRESSES**.

### Information Collection Requests

*1. Title:* Vessel Response Plans, Facility Response Plans, Shipboard Oil Pollution Emergency Plans, and Additional Requirements for Prince William Sound, Alaska.

*OMB Control No.* 2115–0595.

*Summary:* Three of the requirements found in this collection of information are from the passage of the Oil Pollution Act of 1990 (Pub. L. 101–380). The requirements meet the intent of the Oil Pollution Action of 1990 to reduce the impact of oil spills by requiring owners or operators of certain tank vessels and facilities to plan response actions, practice those actions, and ensure, through appropriate means, the necessary response resources for an oil spill. Additionally, Regulation 26 of Annex I of MARPOL 73/78, the Shipboard Oil Pollution Emergency Plan requirements were designed to improve response capabilities and minimize environmental impacts of oil spills.

*Need:* 33 U.S.C. 1321 requires the development of tank vessel and facility response plans. 33 U.S.C. 1901–1911 requires the implementation of MARPOL 73/78 in U.S. regulations. 33 U.S.C. 2735 requires the additional response measure in Prince William Sound, Alaska.

*Respondents:* Owners or operators of tank vessels that carry oil in bulk and operate in waters subject of U.S. jurisdiction; owners or operators of marine transportation-facilities; owners or operators of U.S. flag oil tankers of 150 gross tons and above and each U.S. ship of 400 gross tons and above; owners or operators of tank vessels that load cargo at a facility permitted under the Trans-Alaska Pipeline Authorization Act in Prince William Sound, Alaska.

*Frequency:* On occasion and annually.

*Burden Estimate:* The estimated burden is 188,629 hours annually.

Dated: December 4, 1997.

**O.N. Naccara,**

*Rear Admiral, U.S. Coast Guard, Director of Information and Technology.*

[FR Doc. 97–32261 Filed 12–9–97; 8:45 am]

**BILLING CODE 4910–14–M**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Agency Information Collection Activity Under OMB Review

**AGENCY:** Department of Transportation, Federal Aviation Administration (DOT/FAA).

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) this notice announces that the information collection request described below has been forwarded to the Office of Management and Budget (OMB) for review. The FAA is requesting an immediate emergency clearance in accordance with 5 CFR § 1320.13. The following information describes the nature of the information collection and its expected burden.

**DATES:** Submit any comments to OMB and FAA by February 9, 1998.

**SUPPLEMENTARY INFORMATION:**

*Title:* Office of Rulemaking Request for Evaluation of Customer Standards Survey.

*Need:* This information is being conducted to comply with the Executive Order 12862, Setting Customer Service Standards. The information will be used to evaluate agency performance in the area of response to exemptions. The completion of this form is voluntary and the information collection will be conducted anonymously.

*Respondents:* 325 individuals/business who have applied for exemptions.

*Frequency:* Annually.

*Burden:* 81 hours annually.

**FOR FURTHER INFORMATION CONTACT:** To obtain a copy of the request for clearance submitted to OMB, you may contact Ms. Judith Street at the: Federal Aviation Administration, Corporate Information Division, ABC–100, 800 Independence Avenue, SW, Washington, DC 20591.

Comments may be submitted to the agency at the address above and to: Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10202, Attention FAA Desk Officer, 725 17th Street, NW, Washington, DC 20503.

Issued in Washington, DC, on December 3, 1997.

**Steve Hopkins,**

*Manager, Corporate Information Division, ABC–100.*

[FR Doc. 97–32265 Filed 12–9–97; 8:45 am]

**BILLING CODE 4910–13–M**

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

### Environmental Impact Statement: Montgomery and Frederick Counties, Maryland

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of Intent.

**SUMMARY:** The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed transportation project in Montgomery and Frederick Counties, Maryland.

**FOR FURTHER INFORMATION CONTACT:** Ms. Renee Sigel, Planning, Research, and Environmental Team Leader, Federal Highway Administration, The

Rotunda—Suite 220, 711 West 40th Street, Baltimore, Maryland 21211. Telephone (410) 962–4440.

**SUPPLEMENTARY INFORMATION:** The FHWA in cooperation with the Federal Transit Administration, the Environmental Protection Agency, the U.S. Army Corps of Engineers and the Maryland Department of Transportation, will prepare an environmental impact statement (EIS) on a proposal to provide multi-modal transportation measures within the I–270/U.S. 15 corridor in Montgomery and Frederick Counties, Maryland for a distance of approximately 35 miles.

The proposed strategies consist of a combination of improvements to the existing corridor such as highway widening, and transportation management strategies, as well as additional multi-modal facilities including a busway, or light rail transit. The purpose of the proposed transportation improvements is to address the effect of regional growth and traffic congestion on transportation trends and safety operations.

The I–270/U.S. 15 Corridor provides a connection between the Washington, D.C. metropolitan area and central and western Maryland, as well as to the midwest via I–70 and I–68. Current operating conditions within the I–270/U.S. 15 Corridor reflect severe traffic congestion at many locations within the project area. Congestion is expected to increase as continued growth in both population and employment occur over the next quarter century.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and Local agencies, and to private organizations and citizens who have previously expressed or are known to have an interest in this proposal. A public hearing is anticipated in the fall of 1998. Public notice will be given of the time and place of this hearing.

The draft EIS will be available for public and agency review and comment prior to the public hearing. Scoping meetings for the public, agencies, and for the Metropolitan Washington Council of Governments have been conducted throughout the course of the project. No formal scoping meeting for this project is planned at this time.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties.

Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning And Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation of Federal programs and activities apply to this program.)

Issued On: December 3, 1997.

**Renee Sigel,**

*Planning, Research and Environment Team Leader, Baltimore.*

[FR Doc. 97–32316 Filed 12–9–97; 8:45 am]

**BILLING CODE 4910–22–M**

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

### Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From the Requirements of 49 CFR Part 236

Pursuant to Title 49 Code of Federal Regulations (CFR) part 235 and 49 U.S.C. App. 26, the following railroads have petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR part 236 as detailed below.

**Rules Standards & Instructions Application (RS&I–AP)–No. 1102**

*Applicants*

New Jersey Transit Rail Operations, Incorporated, Mr. Robert A. Randall, Vice President and General Manager—Rail, One Penn Plaza East, Newark, New Jersey 07105–2246.

Morristown and Erie Railway, Incorporated, Mr. Benjamin Friedland, President and General Manager, P. O. Box 2206, Morristown, New Jersey 07962–2206.

New Jersey Transit Rail Operations, Incorporated (NJTR) and the Morristown and Erie Railway, Incorporated (ME), jointly seek temporary relief from Section 236.566 of the Rules, Standards, and Instructions (49 CFR 236.566), to the extent that NJTR be permitted to operate two non-equipped ME locomotives in automatic cab signal territory, on the Morristown Line between Lower Hack, milepost 2.7 and Netcong, milepost 48.0; the Bergen County Line between Bergen Junction, milepost 3.1 and ''BT,'' milepost 14.2; and the Boonton Line between Mountain View, milepost 21.3 and Denville, milepost 34.4, until such time as the locomotives can be equipped with automatic cab signal and automatic train control equipment, on or before June 30, 1998.

*Applicant's justification for relief:* NJTR is currently installing an automatic cab system on the associated trackage, and temporary relief is requested so that the other freight and passenger service can benefit at the earliest time, from the additional safety afforded by the cab signal and automatic train control systems.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and contain a concise statement of the interest of the protestant in the proceeding. The original and two copies of the protest shall be filed with the Associate Administrator for Safety, FRA, 400 Seventh Street, S.W., Washington, D.C. 20590 within 45 calendar days of the date of issuance of this notice. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

FRA expects to be able to determine these matters without oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, D.C. on December 1, 1997.

**Grady C. Cothen, Jr.,**

*Deputy Associate Administrator for Safety Standards and Program Development.*

[FR Doc. 97–32312 Filed 12–9–97; 8:45 am]

**BILLING CODE 4910–06–P**

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

**[Docket No. NHTSA–97–3190]**

### Notice of Receipt of Petition for Decision That Nonconforming 1994–1997 Mercedes-Benz S500 Passenger Cars Are Eligible for Importation

**AGENCY:** National Highway Traffic Safety Administration, DOT.

**ACTION:** Notice of receipt of petition for decision that nonconforming 1994–1997 Mercedes-Benz S500 passenger cars are eligible for importation.

**SUMMARY:** This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 1994–1997 Mercedes-Benz S500 passenger cars that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) They are substantially

similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

**DATES:** The closing date for comments on the petition is January 9, 1998.

**ADDRESSES:** Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 10 a.m. to 5 p.m.]

**FOR FURTHER INFORMATION CONTACT:** George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

**SUPPLEMENTARY INFORMATION:**

## Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Champagne Imports, Inc. of Lansdale, Pennsylvania (''Champagne'') (Registered Importer 90–009) has petitioned NHTSA to decide whether 1994–1997 Mercedes-Benz S500 passenger cars are eligible for importation into the United States. The vehicles which Champagne believes are substantially similar are the 1994–1997 Mercedes-Benz S500 that were manufactured for importation into, and sale in, the United States and certified by their manufacturer, Daimler Benz, A.G., as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 1994–1997 Mercedes-Benz S500 passenger cars to their U.S. certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

Champagne submitted information with its petition intended to demonstrate that non-U.S. certified 1994–1997 Mercedes-Benz S500 passenger cars, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 1994–1997 Mercedes-Benz S500 passenger cars are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence. . . .,* 103 *Defrosting and Defogging Systems,* 104 *Windshield Wiping and Washing Systems,* 105 *Hydraulic Brake Systems,* 106 *Brake Hoses,* 109 *New Pneumatic Tires,* 113 *Hood Latch Systems,* 116 *Brake Fluid,* 124 *Accelerator Control Systems,* 201 *Occupant Protection in Interior Impact,* 202 *Head Restraints,* 204 *Steering Control Rearward Displacement,* 205 *Glazing Materials,* 207 *Seating Systems,* 209 *Seat Belt Assemblies,* 210 *Seat Belt Assembly Anchorages,* 212 *Windshield Retention,* 216 *Roof Crush Resistance,* 219 *Windshield Zone Intrusion,* and 302 *Flammability of Interior Materials.*

Additionally, the petitioner states that non-U.S. certified 1994–1997 Mercedes-Benz S500 passenger cars comply with the Bumper Standard found in 49 CFR Part 581.

Petitioner also contends that non-U.S. certified 1994–1997 Mercedes-Benz S500 passenger cars are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) substitution of a lens marked ''Brake'' for a lens with a noncomplying symbol on the brake failure indicator lamp; (b) installation of a seat belt warning lamp that displays the appropriate symbol; (c) recalibration of the speedometer/odometer from kilometers to miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) installation of U.S.-model headlamp assemblies; (b) installation of U.S.-model front and rear sidemarker/reflector assemblies; (c) installation of U.S.-model taillamp assemblies.

Standard No. 110 *Tire Selection and Rims:* installation of a tire information placard.

Standard No. 111 *Rearview Mirror:* replacement of the passenger side rearview mirror.

Standard No. 114 *Theft Protection:* installation of a warning buzzer microswitch and a warning buzzer in the steering lock assembly.

Standard No. 118 *Power Window Systems:* rewiring of the power window system so that the window transport is inoperative when the ignition is switched off.

Standard No. 206 *Door Locks and Door Retention Components:* replacement of the rear door locks and rear door lock buttons with U.S.-model components.

Standard No. 208 *Occupant Crash Protection:* (a) installation of a U.S.-model seat belt in the driver's position, or a belt webbing actuated microswitch inside the driver's seat belt retractor; (b) installation of an ignition switch actuated seat belt warning lamp and buzzer; (c) replacement of the driver's and passenger's side air bags and knee bolsters if these are not U.S.-model components. The petitioner states that the vehicles are equipped with combination lap and shoulder restraints that adjust by means of an automatic retractor and release by means of a single push button in each front designated seating position, with combination lap and shoulder restraints that release by means of a single push button in each rear outboard designated seating position, and with a lap belt in the rear center designated seating position.

Standard No. 214 *Side Impact Protection:* installation of reinforcing beams.

Standard No. 301 *Fuel System Integrity:* installation of a rollover valve in the fuel tank vent line between the fuel tank and the evaporative emissions collection canister.

Petitioner states that a vehicle identification number plate will be affixed to non-U.S. certified 1994–1997 Mercedes-Benz S500 passenger cars to comply with the requirements of 49 CFR Part 565.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the

docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

**Authority:** 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: December 5, 1997.

**Marilynne Jacobs, Director,**

*Office of Vehicle Safety Compliance.*

[FR Doc. 97–32343 Filed 12–9–97; 8:45 am]

BILLING CODE 4910–59–P

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

**[Docket No. NHTSA–97–3189]**

### Notice of Receipt of Petition for Decision That Nonconforming 1994–1998 Mercedes-Benz S320 Passenger Cars Are Eligible for Importation

**AGENCY:** National Highway Traffic Safety Administration, DOT.

**ACTION:** Notice of receipt of petition for decision that nonconforming 1994–1998 Mercedes-Benz S320 passenger cars are eligible for importation.

**SUMMARY:** This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 1994–1998 Mercedes-Benz S320 passenger cars that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

**DATES:** The closing date for comments on the petition is January 9, 1998.

**ADDRESSES:** Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 10 am to 5 pm]

**FOR FURTHER INFORMATION CONTACT:** George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

**SUPPLEMENTARY INFORMATION:**

#### Background

Under 49 U.S.C. § 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. § 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Champagne Imports, Inc. of Lansdale, Pennsylvania (''Champagne'')(Registered Importer 90–009) has petitioned NHTSA to decide whether 1994–1998 Mercedes-Benz S320 passenger cars are eligible for importation into the United States. The vehicles which Champagne believes are substantially similar are the 1994–1998 Mercedes-Benz S320 that were manufactured for importation into, and sale in, the United States and certified by their manufacturer, Daimler Benz, A.G., as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 1994–1998 Mercedes-Benz S320 passenger cars to their U.S. certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

Champagne submitted information with its petition intended to demonstrate that non-U.S. certified 1994–1998 Mercedes-Benz S320 passenger cars, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 1994–1998 Mercedes-Benz S320 passenger cars are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence . . . .*, 103 *Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 105 *Hydraulic Brake Systems*, 106 *Brake Hoses*, 109 *New Pneumatic Tires*, 113 *Hood Latch Systems*, 116 *Brake Fluid*, 124 *Accelerator Control Systems*, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 207 *Seating Systems*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 212 *Windshield Retention*, 216 *Roof Crush Resistance*, 219 *Windshield Zone Intrusion*, and 302 *Flammability of Interior Materials*.

Additionally, the petitioner states that non-U.S. certified 1994–1998 Mercedes-Benz S320 passenger cars comply with the Bumper Standard found in 49 CFR Part 581.

Petitioner also contends that non-U.S. certified 1994–1998 Mercedes-Benz S320 passenger cars are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) substitution of a lens marked ''Brake'' for a lens with a noncomplying symbol on the brake failure indicator lamp; (b) installation of a seat belt warning lamp that displays the appropriate symbol; (c) recalibration of the speedometer/odometer from kilometers to miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) installation of U.S.-model headlamp assemblies; (b) installation of U.S.-model front and rear sidemarker/reflector assemblies; (c) installation of U.S.-model taillamp assemblies.

Standard No. 110 *Tire Selection and Rims:* installation of a tire information placard.

Standard No. 111 *Rearview Mirror:* replacement of the passenger side rearview mirror.

Standard No. 114 *Theft Protection:* installation of a warning buzzer microswitch and a warning buzzer in the steering lock assembly.

Standard No. 118 *Power Window Systems:* rewiring of the power window system so that the window transport is inoperative when the ignition is switched off.

Standard No. 206 *Door Locks and Door Retention Components:* replacement of the rear door locks and rear door locking buttons with U.S.-model components.

Standard No. 208 *Occupant Crash Protection:* (a) installation of a U.S.-model seat belt in the driver's position, or a belt webbing actuated microswitch inside the driver's seat belt retractor; (b) installation of an ignition switch actuated seat belt warning lamp and buzzer; (c) replacement of the driver's and passenger's side air bags and knee bolsters if these are not U.S.-model components. The petitioner states that the vehicles are equipped with combination lap and shoulder restraints that adjust by means of an automatic retractor and release by means of a single push button in each front designated seating position, with combination lap and shoulder restraints that release by means of a single push button in each rear outboard designated seating position, and with a lap belt in the rear center designated seating position.

Standard No. 214 *Side Impact Protection:* installation of reinforcing beams.

Standard No. 301 *Fuel System Integrity:* installation of a rollover valve in the fuel tank vent line between the fuel tank and the evaporative emissions collection canister.

Petitioner states that a vehicle identification number plate will be affixed to non-U.S. certified 1994–1998 Mercedes-Benz S320 passenger cars to comply with the requirements of 49 CFR Part 565.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

**Authority:** 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: December 5, 1997.

**Marilynne Jacobs,**

*Director Office of Vehicle Safety Compliance.*

[FR Doc. 97–32344 Filed 12–9–97; 8:45 am]

BILLING CODE 4910–59–P

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

**[Docket No. NHTSA–97–3146]**

### Toyota Technical Center, U.S.A., Inc., Receipt of Application for Decision of Inconsequential Noncompliance

Toyota Technical Center, U.S.A., Inc. (Toyota) of Washington, D.C. on behalf of the Toyota Motor Manufacturing, Kentucky, Inc. has determined that some 1998 model Toyota Sienna vehicles fail to comply with 49 CFR 571.120, Federal Motor Vehicle Safety Standard (FMVSS) No. 120, ''Tire Selection and Rims for Vehicles Other Than Passenger Cars,'' and has filed an appropriate report pursuant to 49 CFR Part 573, ''Defect and Noncompliance Reports.'' Toyota has also applied to be exempted from the notification and remedy requirements of 49 U.S.C. Chapter 301—''Motor Vehicle Safety'' on the basis that the noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of an application is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the application.

Paragraph S5.3 of FMVSS No. 120 states that the recommended cold inflation pressure for the designated tire must appear either on the certification label or a tire information label.

Toyota produced 8,528 vehicles from May 12, 1997 through October 13, 1997 which do not meet the labeling requirements stated in the standard. The recommended 240KPa (35 PSI) cold inflation pressure for the designated tire (P205/70R15) is misstated on the certification label as 220 KPa (33 PSI). However, the correct tire inflation pressure appears on the voluntary-affixed tire information label and in the vehicle owners manual.

Toyota supports its application for inconsequential noncompliance with the following three statements:

1. On these vehicles, Toyota has applied a voluntary tire information label, on which the correct recommended pressure, ''240 KPa/35 PSI'' (at maximum loaded vehicle weight) appears, [located at] the door opening portion of the driver side B-pillar. Toyota believes that owners will refer to this tire information label rather than the certification label, making the possibility of confusion due to the different tire inflation pressures quite low.

2. The vehicle owner's manual also indicates the correct recommended inflation pressure.

3. The Maximum Loaded Vehicle Weight (MLVW)—the weight of the heaviest vehicle of the car line with full accessories, passengers in all designated seating positions, and maximum cargo and luggage load—of the Toyota Sienna is 2,365 kg. In such [a] fully-loaded condition, the rear axle is loaded more than the front [axle], resulting in a rear axle load of 1,204 kg or 602 kg on each rear tire. The load limit of the subject P205/70R15 tire inflated to 220 KPa (33 PSI) is 650 kg. Therefore, there still exists a 48 kg margin under the MLVW. Since the Sienna is a passenger vehicle—as opposed to a cargo vehicle—it is unlikely that the owner will overload it.

Interested persons are invited to submit written data, views, and arguments on the application of Toyota described above. Comments should refer to the docket number and be submitted to: U.S. Department of Transportation, Docket Management, Room PL–401, 400 Seventh Street, S.W., Washington, D.C., 20590. It is requested that two copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date, will also be filed and will be considered to the extent possible. When the application is granted or denied, the notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: January 9, 1998.

(49 U.S.C. 30118, 30120; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: December 4, 1997.

**L. Robert Shelton,**

*Associate Administrator for Safety Performance Standards.*

[FR Doc. 97–32266 Filed 12–9–97; 8:45 am]

BILLING CODE 4910–59–P

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

**[STB Finance Docket No. 33510]**

### Kansas City Southern Lines, Inc.; Corporate Family Transaction Exemption; KCS Transportation Company and the Kansas City Southern Railway Company

Kansas City Southern Industries, Inc. (KCSI), Kansas City Southern Lines, Inc. (KCSL), the Kansas City Southern

Railway Company (KCSR), and KCS Transportation Company (KCST) have jointly filed a verified notice of exemption for KCSL's common control of KCSR and KCST's rail subsidiaries, Gateway Western Railway Company (GWWR), and Gateway Eastern Railway Company (GWER).[1]

The transaction was expected to be consummated on or about November 21, 1997, at which time KCST was to merge into KCSL with KCSL as the surviving corporation. As a result, KCSR and GWWR will be direct subsidiaries of KCSL and GWER will be its indirect subsidiary. After the transaction, KCSL will commonly control KCSR, GWWR, and GWER. KCSL will also own 49% of the outstanding stock of Mex Rail Corporation, the parent company of the Texas Mexican Railroad Company and 37% of the outstanding stock of Grupo TFM, which in turn owns 80% of the outstanding stock of Transportacion Ferroviaria Mexicana, a Mexican railroad company.

The parties state that the transaction will take place within the KCSI corporate family and will not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside of the corporate family. Thus, it is the type of transaction specifically exempted from prior review and approval under 49 CFR 1180.2(d)(3).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Accordingly, the exemption is subject to the labor protective conditions set forth in *New York Dock Ry.—Control—Brooklyn Eastern Dist.* 360 I.C.C. 60 (1979).

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to reopen will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33510, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–001. In addition, a copy of each pleading must be served on Robert K. Dreiling, Kansas City Southern Industries, 114 West 11th Street, Kansas City, MO 64105 and William A. Mullins, Troutman Sanders LLP, 1300 I Street, N.W., Suite 500 East, Washington, DC 20005–3314.

Decided: December 3, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

**Vernon A. Williams,**

*Secretary.*

[FR Doc. 97–32269 Filed 12–9–97; 8:45 am]

**BILLING CODE 4915–00–P**

[1] In addition to invoking the class exemption for this transaction, KCSI is asking the Board to grant retroactive authority for a previous transaction—the transfer of the stock of KCSR and KCST to KCSL—which the parties undertook but for which they sought no approval from the Board. If KCSI wants to seek Board approval of that transaction, it should file a separate petition for exemption (no class exemption provides for retroactive application). Such a request may not be ''piggybacked'' on this notice.

## DEPARTMENT OF THE TREASURY

### Bureau of the Public Debt

### Proposed Collection: Comment Request

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Reinvestment Application.

**DATES:** Written comments should be received on or before February 9, 1998, to be assured of consideration.

**ADDRESSES:** Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

**SUPPLEMENTARY INFORMATION:**

*Title:* Reinvestment Application.

*OMB Number:* 1535–0096.

*Form Number:* PD F 1993.

*Abstract:* The information is requested to support a request that proceeds of matured Series H savings bonds be reinvested in Series HH bonds.

*Current Actions:* None.

*Type of Review:* Extension.

*Affected Public: Individuals.*

*Estimated Number of Respondents:* 270,000.

*Estimated Time Per Respondent:* 15 minutes.

*Estimated Total Annual Burden Hours:* 67,500.

**Request for Comments**

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: December 4, 1997.

**Vicki S. Thorpe,**

*Manager, Graphics, Printing and Records Branch.*

[FR Doc. 97–32257 Filed 12–9–97; 8:45 am]

**BILLING CODE 4810–39–P**

Federal Register

Wednesday
December 10, 1997

Part II

# Department of Agriculture

## Federal Crop Insurance Corporation

7 CFR Part 457

Common Crop Insurance Regulations; Basic Provisions; and Various Crop Insurance Provisions; Final Rule

**DEPARTMENT OF AGRICULTURE**

**Federal Crop Insurance Corporation**

**7 CFR Part 457**

**RIN 0563–AB03**

## Common Crop Insurance Regulations; Basic Provisions; and Various Crop Insurance Provisions

**AGENCY:** Federal Crop Insurance Corporation, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Federal Crop Insurance Corporation (FCIC) amends the Common Crop Insurance Regulations to delete the late and prevented planting provisions currently contained in many Crop Provisions, incorporate revised late and prevented planting provisions into the Common Crop Insurance Policy Basic Provisions, and add definitions and provisions that are common to most crops. The intended effect of this action is to provide policy changes that meet the needs of the insured, are easier to administer, and to delete repetitive provisions contained in various Crop Provisions.

**EFFECTIVE DATE:** This rule is effective December 4, 1997.

**FOR FURTHER INFORMATION CONTACT:** Louise Narber, Insurance Management Specialist, Research and Development, Product Development Division, Federal Crop Insurance Corporation, United States Department of Agriculture, 9435 Holmes Road, Kansas City, MO 64131, telephone (816) 926–7730.

**SUPPLEMENTARY INFORMATION:**

### Executive Order 12866

The Office of Management and Budget (OMB) has determined this rule to be significant, and therefore, this rule has been reviewed by OMB.

### Paperwork Reduction Act of 1995

Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), those collections of information have been approved by the Office of Management and Budget (OMB) under control number 0563–0053.

### Cost-Benefit Analysis

A Cost-Benefit Analysis has been completed and is available to interested persons at the Kansas City address listed above. In summary, the analysis finds that the rule makes several major changes in the implementation of prevented planting provisions. Specifically, the rule: (1) Eliminates substitute crop benefits, largely to reduce the likelihood of fraud; (2) increases prevented planting for cover crop or black dirt situations, providing better protection to producers who are truly unable to plant a crop for harvest; and (3) simplifies the payment method by making payments on an acre-by-acre basis in all cover crop and black dirt situations. These provisions are designed to improve the protection provided to producers in adverse prevented planting situations, and simplify program operation.

Since this rule is expected to be implemented in an actuarially sound manner, there are no associated excess losses that will be incurred by the Federal government in the aggregate. Two provisions—the increase in coverage in black dirt and cover crop situations provision and the ''separate payment'' provision—are expected to result in an increase in indemnities and an increase in rates. The elimination of substitute crop provisions will result in reduced indemnities, and a rate decrease in the aggregate. The net effect of these changes is likely to be small in terms of the rate impact, and will vary according to crop and geographical location. As a result of the small expected average rate impact, any changes in reimbursements to private companies for delivery or any underwriting gains are expected to be minimal. The amendments made to these regulations will simplify program operations, benefit producers, FCIC, and reinsured companies, and conform with the Federal Crop Insurance Act.

### Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

### Executive Order 12612

It has been determined under section 6(a) of Executive Order 12612, Federalism, that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on States or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government.

### Regulatory Flexibility Act

This regulation will not have a significant economic impact on a substantial number of small entities. New provisions included in this rule will not impact small entities to a greater extent than large entities. The amount of work required of insurance companies will not increase because the information to determine eligibility is already maintained in their office and the other required information is already being collected under the present policy. No additional actions are required as a result of this rule on the part of the producer or the insurance companies. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605), and no Regulatory Flexibility Analysis was prepared.

### Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance Under No. 10.450.

### Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

### Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988 on civil justice reform. The provisions of this rule will not have retroactive effect. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. The administrative appeal provisions published at 7 CFR part 11 must be exhausted before action against FCIC for judicial review may be brought.

### Environmental Evaluation

This action is not expected to have a significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

### National Performance Review

This regulatory action is being taken as part of the National Performance Review Initiative to eliminate unnecessary or duplicative regulations and improve those that remain in force.

### Background

On Tuesday, August 12, 1997, FCIC published a proposed rule in the **Federal Register** at 62 FR 43236 to

amend the Common Crop Insurance Regulations, Basic Provisions (Basic Provisions) (7 CFR part 457) and the Crop Provisions (7 CFR §§ 457.101–457.157) effective for the: (1) 1998 and succeeding crop years for wheat, barley and oats in counties with a December 31 contract change date; flax, cotton, ELS cotton, sunflowers, and sugar beets in counties with a November 30 contract change date; and corn, grain sorghum, soybeans, raisins, fresh market tomatoes (guaranteed production plan), rice and dry beans; (2) 1999 and succeeding crop years for wheat, barley and oats in counties with a June 30 contract change date; rye, Texas citrus tree, Florida citrus fruit, sugar beets in counties with an April 30 contract change date; and figs, pears, nursery, sugarcane, forage production, walnuts, almonds, safflowers, fresh market sweet corn, macadamia trees, cranberry, onion, grapes, fresh market tomatoes (dollar plan), fresh market peppers, forage seeding, peaches and plums; and (3) 2000 and succeeding crop years for Texas citrus fruit, Arizona-California citrus, and macadamia nuts. This rule deletes the late and prevented planting provisions, certain definitions and other provisions that are applicable to most crops and are currently contained in the Crop Provisions and incorporates these definitions and provisions into the Basic Provisions to better meet the needs of the insured.

Following publication of the proposed rule, the public was afforded 30 days to submit written comments and opinions. Comments were received from an insurance service organization, reinsured companies, farm organizations, a crop insurance agent, national commodity groups, state commodity groups, a regional commodity group, a congressional office, and legal counsel for reinsured companies. The comments and FCIC's responses are as follows:

*Comment:* Legal counsel for a reinsured company and an insurance service organization stated that thirty days was not sufficient time to review and comment on the proposed rule. One comment urged FCIC to leave the comment period open for another 90 days to allow additional time for analysis, testing, further comment, and the promulgation of needed procedures.

However, a reinsured company urged implementation of these provisions for the 1998 crop year. The commenter stated that the revised language for prevented planting coverage is a major step in the right direction. Many hours have been spent in developing these provisions and the commenter strongly supports approval of the changes. The changes bring simplicity to what has been a very complicated coverage.

Farm organizations supported efforts to expedite these changes by using a 30-day comment period. There should be adequate time for agent training and producer education prior to policy sign-up for spring planted crops. One of the problems with prevented planting coverage in the past has been the lack of understanding by producers of their coverage.

*Response:* Based on the number of comments received, FCIC believes that for most crops 30 days provided an adequate comment period. However, due to the number of comments received regarding the prevented planting percent for cotton and ELS cotton, this rule will be made effective for these two crops for the 1998 crop year only. FCIC will solicit additional comments regarding prevented planting coverage levels for these crops for the 1999 and succeeding crop years in a future rule. The proposed changes are necessary for the simplification of the program and any extension of the comment period would result in a delay in the implementation of this rule until the 1999 crop year. To best meet the needs of producers the revised coverage should be implemented for spring planted crops in 1998.

*Comment:* An insurance service organization felt that the amount of time stated in the preamble under the Paperwork Reduction Act for the completion of an acreage report is underestimated since all farm data, including APH and unit arrangement, must be incorporated into the process.

*Response:* FCIC had to estimate the amount of time needed to complete each form. The average time needed to complete each form represents an average of producers with only one crop and one unit, larger operations with several crops and units, and producers who insure a crop but do not plant (which would generate a zero acreage report and only a yield descriptor on the APH form, etc.). The average time stated for all forms is as accurate as is possible.

*Comment:* Reinsured companies and an insurance service organization questioned the provisions in 7 CFR 457.2. They stated that sections 7 CFR 457.2(b) and (c) specify that FCIC may offer the catastrophic level of coverage directly to the insured through the local Farm Service Agency (FSA) offices. They suggested removing this language because, effective for the 1998 crop year, FSA offices will no longer deliver crop insurance.

*Response:* Although the catastrophic risk protection program is no longer delivered through local FSA offices, the authority for such delivery still exists. However, FCIC has modified the language to reflect the decision of the Secretary to only offer coverage through reinsured companies unless the Secretary determines that the availability of local agents is not adequate.

*Comment:* A reinsured company stated that it supported FCIC's decision to incorporate certain regulations into the Basic Provisions but cautioned that providing too much detail in the policy could make it difficult for the producer to understand and may drive producers away from the crop insurance program. The commenter stated that it is apparent that FCIC is attempting to provide producers with underwriting rules and procedures. The commenter believes that the insurance policy should simply state definitions for clarity and coverages for loss payments. They stated that insureds do not need to know how to underwrite a risk, they are the risk. They need to be aware of what the coverages are, when the premium is due, what constitutes a loss, when it will be paid, and what must be done in the event of questions. The commenter stated that section 457.2(b) is unnecessary because it is a statement of underwriting rules. A producer who has received the crop insurance policy has already chosen an insurance carrier and has made a decision regardless of whether FSA can still issue CAT coverage. The insurance agent should have discussed multiple contract procedures with the producer prior to completing a crop insurance application. The commenter further stated that section 457.2(d) determines eligibility for coverage and is also unnecessary. If the producer received the policy information, the producer's eligibility has already been determined. Otherwise the producer would not receive the policy.

*Response:* The policy must contain the information necessary for the producer to make informed decisions. Removing as much repetitious information as possible from each individual crop provision and placing it in the Basic Provisions will make each individual crop policy shorter and easier to understand. It will also eliminate any inadvertent discrepancies that may have existed between such information that was previously in each individual crop policy but is now stated only once in the Basic Provisions. The provisions are regulatory and eligibility and other requirements for participants must be published where compliance is mandatory. No change has been made.

*Comment:* Reinsured companies commented on and questioned the

language in 7 CFR 457.2(d), which states that if more than one contract exists, all contracts are void unless proven to be inadvertent. If found to be inadvertent, the contract with the earliest signature date will be valid and no indemnity or premium will attach to the canceled contract. The commenters posed these questions. What happens to crop acres reported on the canceled contract, and what impact do these crop acres have on the contract determined to be in force. Whether the crop acres on the canceled contract will be uninsured or will such acres be added to the contract found to be in force. If the latter, have all policy conditions regarding filing actual production history and an acreage report been met. If the contract in force has higher levels of coverage than the canceled contract, whether the insured owes the additional premium based on the contract in force. It has been permissible for a producer of hybrid seed corn who contracts with different seed corn companies to have more than one insurance contract for hybrid seed corn. Whether this will be permissible.

*Response:* The contract in effect will not be impacted by the canceled contract. When multiple contracts exist and are inadvertent and without the fault of the insured, all timely reporting done by the producer (e.g., actual production history reports and acreage reports) will be considered reported under the active contract. If the active contract has higher levels of coverage than the canceled contract, the insured will owe the additional premium based on the active contract. FCIC has revised the Basic Provisions to allow producers of hybrid seed corn with more than one contract with different seed companies to insure the acreage under each contract with a different reinsured company.

*Comment:* A reinsured company and an insurance service organization commented on the language in section 457.8(b). The reinsured company stated that the provision is not consistent with the Standard Reinsurance Agreement (SRA) because the SRA does not allow rejection of applications for insurance by a reinsured company. The commenter also stated that the phrase ''authorized to sell'' should be defined. The insurance service organization stated that the first sentence of these provisions has eliminated the company's prerogative to make determinations on excessive risk situations by eliminating the words ''or the reinsured company's'' determination that the insurance risk is excessive. This commenter questioned the effect of the proposed language since ''direct written'' federal policies are no longer applicable. The commenter also stated that the reinsured company must retain some prerogatives in the case of excessive risk. The FCIC should review possible options such as removing the cap on the Assigned Risk Fund or other ''escape hatch'' in the event of significant change in the risk of a large area.

*Response:* FCIC believes that the authority to sell the policies is clearly specified in other regulations and agreements, and those provisions should not be duplicated in this rule. Under sections 508(b)(8) and 508(c)(9) of the Act, only FCIC has the authority to limit insurance on any farm, county or area as a result of excessive risk. Information available in the **Federal Register** informs the public that applications may not be accepted if FCIC determines that excessive risk exists. If such a situation were found to exist, no insurance coverage will be provided. If the reinsured company believes that the risk is excessive under a policy, it can seek a determination from FCIC. Provisions regarding referral to agents selling FCIC policies are no longer applicable and they have been removed.

*Comment:* An insurance service organization suggested that a definition be added to include both ''production guarantee'' for APH crops and ''amount of insurance'' for dollar plan crops. This would shorten several long sentences that currently refer to these terms.

*Response:* Adding a term which combines both of the definitions of ''production guarantee'' and ''amount of insurance'' would make the provisions less clear because three terms would be in use rather than two. No change has been made.

*Comment:* An insurance service organization suggested that ''actuarial documents'' be defined instead of ''actuarial table'' because not all information is provided in table format. The commenter stated that the reference to ''forms'' in the definition suggests that the application and options are included. The commenter also questioned why ''prices for computing indemnities'' are specified since prices are used for premium calculation as well.

*Response:* FCIC has determined that ''prices for computing indemnities'' should not be included in this definition since those prices are now contained in the Special Provisions. Accordingly, the term ''Actuarial Table'' has been revised to ''actuarial documents'' and the definition of ''actuarial documents'' has been clarified.

*Comment:* An insurance service organization suggested that the definition of ''application'' be modified. The commenter stated that since suspension, debarment and violation of the controlled substance provisions would result in placement on the ineligibility list, it does not seem necessary to list these specific causes. The definition as written suggests that a break in coverage is always the result of some adverse action.

*Response:* FCIC has revised the definition to refer to both cancellation and termination to mitigate any connotation of adverse action.

*Comment:* An insurance service organization suggested deleting the phrase ''made on our form'' from the definition of ''assignment of indemnity.'' The commenter stated that companies may accept and include a lienholder without completion of a form entitled assignment of indemnity. The lienholder's name can be entered on the application, acreage report, or loss form as ''Loss payable to me and _____.''

*Response:* Since the Standard Reinsurance Agreement requires that all forms used by the reinsured company be approved by FCIC, the phrase ''our form'' refers to any form that has been approved by FCIC. The reinsured company can effectuate an assignment of indemnity through any form approved for such purpose. Use of an unapproved form by the reinsured company is prohibited. No change has been made.

*Comment:* A reinsured company and an insurance service organization commented on the definition of ''basic unit'' which states'' * * * No further unit division may be made after the acreage reporting date for any reason.'' The commenter stated that basic units may be corrected effective for the current crop year, which could result in more units than were reported. An insurance service organization suggested that a brief ''unit'' definition be provided in conjunction with a more detailed basic and optional unit section for easier reference, especially since the basic unit definition varies for some crops. The commenter stated that the phrase ''Units will be determined when the acreage is reported * * *'' leads to questions and difficulties about the actual deadline for determining optional units. Qualification for optional units for APH crops depends on filing production reports to match those units by the production reporting date, which is now earlier than the acreage reporting date for many crops. The commenter suggested rewriting the sentence to read ''Units will be determined when the acreage is reported (subject to other

requirements).'' The commenter also questioned if the last two sentences of the definition should be included in the definition or in the ''optional unit'' section.

*Response:* Adding the phrase ''subject to other requirements'' or a simplified definition of ''unit'' and a detailed section on basic and optional units would not make these provisions more clear. FCIC has moved the last two sentences of the definition to the ''Unit Division'' section.

*Comment:* A reinsured company suggested adding ''for all units of the insured crop'' at the end of the definition ''claim for indemnity.'' Often a unit with damage may be harvested earlier than other units of the crop. It is customary to finalize all loss units at the same time, so the beginning of the 60-day period should commence after harvest is completed on all units.

*Response:* Because individual units may have different end of insurance period dates (e.g., differing harvest dates, different calendar dates for the end of the insurance period, prevented planting acreage, etc.), FCIC does not believe it is in the best interest of the insured to delay finalization of claims until all units are harvested. No change has been made.

*Comment:* An insurance service organization commented on the definition of ''contract'' which is (See ''policy''). The commenter stated that the definition of ''contract'' is integral in the language of the SRA where it is defined. The [current draft] SRA, however, does not define ''policy.'' The proposed Basic Provisions defines ''policy'' but not ''contract.'' The commenter stated that the terms should be consistent between both documents.

*Response:* The definition of ''policy'' and ''contract'' are the same and are not inconsistent with the provisions in the SRA. The definition in the SRA is intended to accommodate differences among reinsured companies in the manner by which a policyholder's interests are identified. Some reinsured companies issue separate contract numbers for each county and crop; others include multiple crops and counties under the same contract number. Since the purpose of the definitions is not identical, the definitions cannot be identical. No change has been made.

*Comment:* An insurance service organization recommended changing the definition of ''county'' by replacing the word ''the'' at the beginning of the sentence with the word ''any.'' This would recognize the possibility of multi-county applications. Multi-county applications, with adoption of appropriate management procedures, would permit a policyholder to insure a farm in another county, if it was acquired after the sales closing date.

*Response:* The provision has been clarified to recognize that more than one county may be shown on the application. However, an insured may not add acreage in another county after the sales closing date unless such addition results from the transfer of insurance from a previous insured.

*Comment:* An insurance service organization questioned why the word ''deductible'' is defined since it is not used in the Basic Provisions.

*Response:* The word ''deductible'' is used in some Crop Provisions. It is defined in the Basic Provisions so it will only have to be defined once. No change has been made.

*Comment:* Reinsured companies commented on the definition of ''final planting date.'' The commenters stated that the final planting dates are too late for some crops and counties, especially with the 25 day late planting period. The commenters voiced their concern regarding the impact the late planting provisions will have in extending coverage beyond a time period that will allow for the normal maturity of the late planted crop. The commenters also questioned if an effort is being made to assure that all final planting dates are as accurate as possible, and if reinsured companies will be involved in that process.

*Response:* The Basic Provisions contain provisions that are generally applicable to most crops. If individual crops or areas require a late planting period shorter than 25 days, it will be specified in the Crop Provisions or the Special Provisions, which control the Basic Provisions. FCIC will continue to study and change final planting dates as necessary and always welcomes comments and recommendations from all interested parties, including reinsured companies and producers.

*Comment:* A reinsured company and an insurance service organization stated that the definitions of ''FSA'' and ''FSA farm serial number'' should be deleted because there is no need for reliance on FSA information in the crop insurance program.

*Response:* The FSA farm serial number is used to qualify for optional unit division in certain crop policies. Further, FSA information may be used in the crop insurance program. No change has been made.

*Comment:* A reinsured company, an insurance service organization, and legal counsel for a reinsured company made comments regarding the definition of ''good farming practices.'' The definition does not recognize how fact sensitive and cost sensitive good farming practices are. If the practices ''generally'' used in the county and recognized by the Extension Service are the ''ideal'' practices or are the practices geared to the higher yield farms, beginning producers, highly leveraged producers, or producers of poorer soil will be discriminated against and, perhaps, ineligible for an indemnity. For example, three applications of a herbicide may be ideal and may be applied by producers with a high yield history. Two applications, however, may be all that a producer with a low yield history or insufficient funds may be able to afford. For that producer, two applications are a good farming practice. Whether a producer is a ''good'' producer or a ''bad'' producer may depend on what he or she can afford. The rule must be amended to accommodate the circumstances of the particular farm and producer. The reference to ''Cooperative State Research, Education, and Extension Service,'' should be deleted from the definition of ''good farming practices'' or the definition must acknowledge that there may exist acceptable cultural practices that are not necessarily recognized by the CSREE. A producer using practices that differ from the norm for the county probably would not be eligible to insure. The practices used should be compared to those of the area in which the farm is located, not the county. Perhaps a producer is located in a microclimate within the county where practices legitimately differ from the county norm.

*Response:* FCIC recognizes that certain circumstances for particular farms and producers may differ (e.g. types, varieties, farming practices, soil types, etc.), and should be considered when determining if good farming practices were followed. However, the producer's inability to afford necessary inputs to produce the crop should not be a consideration in the determination of good farming practices. FCIC believes that the Cooperative State Research, Education, and Extension Service (CSREES) recognizes farming practices that are considered acceptable for producing a crop. If a producer is following practices not currently recognized as acceptable by the CSREES, there is no reason why such recognition cannot be sought by interested parties.

*Comment:* A reinsured company stated that the definition of ''interplanted'' is too restrictive for interplanted perennials such as almonds and walnuts which are maintained separately and harvested separately,

unless such will be acknowledged in the appropriate Crop Provisions.

*Response:* The definition of ''interplanted'' contained in the Basic Provisions does not adequately suit perennial crops. Perennial crop provisions will contain an appropriate definition. No change has been made.

*Comment:* A reinsured company suggested adding the word ''initially'' between the words ''acreage'' and ''planted'' in the definition of ''late planted.''

*Response:* FCIC agrees with the suggestion and has amended the definition accordingly.

*Comment:* A reinsured company, farm organization, a state commodity group, and an insurance service organization commented on the 25 day period in the definition of ''late planting period.'' The commenters state that producers will have more incentive to plant the insured crop during the late planting period. The 25 day period is consistent with producer comments expressed during USDA public hearings held last summer. The commenters support a reduction of 1 percent per acre per day for the full 25 day late planting period, or a maximum reduction of 25 percent. The phrase ''unless otherwise specified in the Special Provisions'' should be deleted because it could lead to program complexity and checkerboard application.

*Response:* Although FCIC recognizes the need to mitigate program complexity, removal of the exception for Special Provisions would remove the flexibility needed to recognize those individual crops or areas that require a shorter late planting period. No change has been made.

*Comment:* A reinsured company questioned if the definition of ''non-contiguous'' is intended to permit two acreages of the same crop that are separated by a different crop to qualify for separate optional units. If so, this may generate a large number of additional optional units for crops for which ''non-contiguous'' is a criterion for optional unit division.

*Response:* The definition of ''non-contiguous'' is not intended to allow two tracts of the same crop that are only separated by a different crop to be considered two separate optional units. Units must be separated by land that the insured person does not own or have an interest in.

*Comment:* Legal counsel for a reinsured company stated that the definition of ''planted acreage'' sets forth requirements that are inherent in the concept of ''good farming practice.'' This definition is redundant.

*Response:* FCIC agrees that some of the information is redundant but believes that the term should be defined since it is used in the provisions. No change has been made.

*Comment:* Reinsured companies, an insurance service organization, and legal counsel for a reinsured company expressed concern with the definition of ''practical to replant.'' The commenters asked whether marketing windows should be a factor in determining whether a crop should be replanted. They state that the intent of the policy is to insure yield, not that the crop can be marketed during an optimum marketing window. They also state this change in the insurance policy represents a change in long standing public policy. They state that the Administrative Procedure Act requires FCIC to disclose in detail the thinking that animated this proposal. FCIC has not done this, therefore, this definition should be re-proposed for public comment. The commmenters also expressed concern that marketing windows are unrelated to losses from natural disaster and FCIC has long opposed insuring such windows simply because of the opportunity for fraud. The introduction of lost marketing windows as an insured cause of loss makes FCIC's policy a ''business interruption'' policy that will dramatically increase loss ratios and premiums. The commenters were also concerned moisture availability, marketing window, condition of the field, and time to crop maturity are all subjective determinations that add unnecessary complexity to the program. The policy should deem that it is practical to replant through the late planting period. Further, the commenters were concerned with the provision that states, ''unavailability of seed or plants will not be considered a valid reason for failure to replant'' will substantially add to producers' costs. Often it is possible to replant the insured crop only if a different, faster growing seed is used. There are often shortages of such seeds when there is a widespread disaster and those farmers who can least afford new seed, *e.g.*, beginning producers, will wait until they are certain the original seed cannot germinate before investing again in seed. By that time, seed is sometimes unavailable. Clearly, if it is impossible to replant, it should not be practical to replant by law. They state that FCIC's rule will require all producers in general, and beginning producers in particular, to invest in seed that they may not need. While this may be a boom to seed companies, they are not the intended beneficiaries of the Act. In addition, the commenters state that a crop cannot be appraised and released for another use until it is no longer practical to replant. Making the determination that it is no longer practical to replant has been problematic since it may be practical to replant in some regions yet not in others within the late planting period. They state that policy language has been weak in this regard and there is no attempt in this rule to strengthen it. They requested that consideration be given to counting the ''salvage value'' against the insured crop if an insured chooses to plant an alternate or replacement crop when it is practical to replant the original. Two possible concerns are that the alternate crop is not an insured crop and, therefore, the value is difficult to determine, and the alternate crop is insured with a different company, causing administrative difficulties. Nevertheless, the approach could put the industry in the cooperative position of ''staying with the insured'' regardless of the insured's replanting choice, while limiting exposure to the guarantee that was originally established.

*Response:* The Federal Agriculture Improvement and Reform Act of 1996 mandated FCIC to consider marketing windows in determining whether it is feasible to require planting during a crop year. Therefore, the change implements statute and does not require detailed justification. Many factors other than the end of the late planting period enter into the decision of whether it is practical to replant. The definition of ''practical to replant'' is only applicable to planting acreage to the originally planted crop. If it is considered practical to replant, the Crop Provisions may authorize a replanting payment. If the crop is damaged by an insurable cause of loss, an appraisal will be completed to see if the crop qualifies for a replanting payment. However, this appraisal is used solely as a qualifier.

Planting a different crop following the failure of an originally planted crop is not replanting. If an alternative crop is planted when it is still practical to replant to the originally planted crop, the originally planted crop is not insured. No change has been made.

*Comment:* Several comments were received regarding the definition of ''prevented planting.'' Farm organizations stated strong support for the new definition, which includes acreage prevented from planting by the final planting date or by the end of the late planting period due to any insured cause of loss. Reinsured companies questioned the phrase ''majority of producers in the surrounding area.''

There will be instances where land characteristics of a few producers or a single producer prevent planting of the insured crop. Possibly the phrase ''with similar land characteristics'' should be inserted after ''majority of producers'' to address this situation. The commenters also suggested that the sentence ''You must have failed to plant * * *'' be changed to ''You must have been prevented from planting. * * *'' Legal counsel for a reinsured company recommended clarifying the definition of ''prevented planting'' The definition should make clear that if a majority of producers did replant but had losses that exceeded what would have been their claims for prevented planting, then, indeed, a majority were prevented from planting. The comment also indicated that the term ''surrounding area'' is confusing. The commenter believes the term describes the entire area in which the insured cause occurs, even if it occurs across state lines. Also, the term ''majority'' was troublesome to the commenter. A reinsured company has no way of knowing whether a majority of uninsured producers or another reinsured company's policyholders were prevented from planting. Suppose an insured lives on a line, north of which all farmers, numbering 100, were not prevented from planting and south of which all farmers, numbering 101, were prevented from planting. The commenter asked whether the definition is satisfied.

*Response:* The phrase, ''majority of producers'' has been removed. The definition of ''prevented planting'' has been amended to include the phrase ''You must have been prevented from planting'' as suggested. FCIC has also clarified that a crop will be considered to have been prevented from being planted if most producers are also prevented from planting on acreage with similar characteristics in the surrounding area.

*Comment:* A reinsured company questioned the definition of ''prevented planting, notice of.'' The commenter stated that notice can be given by telephone but must be confirmed in writing within 15 days. The commenter asked if it was the intent that multiple notices be given if the county had multiple final planting dates.

*Response:* Based on this and other comments, the definition has been deleted.

*Comment:* An insurance service organization suggested that the phrase ''in the actuarial documents'' replace the phrase ''in the Special Provisions or an addendum thereto'' in the definition of ''price election.'' The commenter stated that the term creates confusion because it refers variously to the established (or preliminary) price, a market price, or to the value resulting from multiplying a percentage chosen by the insured by either of the first values cited. It would be helpful either to create a new term or to assure that this term is used consistently in policy and procedure. Dollar plan crops may have an amount of insurance instead of a ''price percentage,'' but does ''price election'' apply any better?

*Response:* Since the price election is an integral part of the contract, the insured must receive notification of the price election each year. Insureds receive the Special Provisions each year. They do not receive the actuarial documents. No change has been made.

*Comment:* An insurance service organization stated that the words ''replace'' and ''replacing'' in the definition of ''replanting'' can be read to mean another crop is being substituted for the originally planted crop.

*Response:* The definition makes it clear that the land must be prepared to replace the damaged or destroyed crop. However, FCIC has clarified that the land must be prepared to replace the insured crop.

*Comment:* A reinsured company questioned what the phrase ''in certain instances'' means in the definition of ''representative sample.''

*Response:* The phrase is intended to provide the reinsured company with the discretion to allow the producer to harvest the crop and only leave samples of the residue. Certain circumstances may be when an area has widespread comparable losses. No change has been made.

*Comment:* A reinsured company suggested that the definition of ''state'' be modified to read, ''The state where the crop is grown, as shown on your accepted application.''

*Response:* There may be instances in which a crop insured by written agreement may be under the actuarial documents of a county in a state other than where it is grown. In this case, the state listed on the accepted application would be the state from which the actuarial documents originate. No change has been made.

*Comment:* A reinsured company suggested including language in the definition of ''summary of coverage'' that acknowledges that other names also apply to this document.

*Response:* The definition of ''summary of coverage'' defines the term as used in the policy. A form with a different name would be considered a summary of coverage so long as it meets the criteria contained in the definition. No change has been made.

*Comment:* Several comments were received with regard to section 2(b). A reinsured company and an insurance service organization questioned whether an incomplete application must be rejected, or whether reinsured companies can allow a short amount of time to obtain the missing information. The commenters asked about alternatives for the applicant and the reinsured company if the sales closing date has passed before the omission is discovered. An insurance service organization questioned whether companies have the authority to alter the named insured by deleting any part that is incomplete, as implied in the second sentence. The commenter asked whether this provision could be in procedure rather than the policy. Legal counsel for a reinsured company asked if the next to the last sentence in section 2(b) should indicate that coverage will be reduced *by* ''that person's share'' rather than *to* ''that person's share?'' Also, in the last sentence of the same section, the commenter asked whether the ''person'' refusing to supply a tax identification number is the same person or a different person than the ''entity'' to whom insurance will not be available.

*Response:* The intent of the section 2(b) is to advise the applicant that all required information must be provided and that the social security number or the employer identification number, as appropriate, for all persons having a substantial beneficial interest in the insured crop always must be included on the application. The application must be rejected if all necessary information is not provided by the sales closing date. It is the insured's and agent's responsibility to ensure that no information is omitted. Reinsured companies will delete those persons from the application who refuse to provide the necessary information. The next to last sentence in section 2(b) should indicate that coverage will be reduced by that person's share. The sentence has been amended accordingly. The last sentence has been revised to clarify that if a person refuses to provide identification information, insurance will not be available for that person and any entity in which that person has a substantial beneficial interest.

*Comment:* Several comments were received with regard to section 2(e). An insurance service organization stated that the second sentence is unclear as to its effect. The commenter stated that, as written, a person could not be eligible until all payments are made in accordance with an agreement to pay, a fact that would not be known until the

last payment is made. If eligibility is intended to be restored once a payment schedule is established, the phrase should be clarified. Legal counsel for reinsured companies stated that section 2(e) is illegal, unenforceable and in conflict with FCIC's own regulations and procedures. The commenter also stated that unpaid debts alone do not create ineligibility because the policyholder's name must be placed on an ineligible list after certain procedural requirements are satisfied and that list must be given to insurers before the action is effective. The commenter suggested that FCIC should conform this paragraph to section 23, 62 Fed. Reg. at 43248, which states that your insurance policy will be canceled if you are determined, by the appropriate Agency, to be ineligible by reason of debt. The commenter also expressed concern that the proposed language is unclear as to which termination date triggers delinquency, the one contained in the current year crop policy or the one applicable to next year's crop. The commenter also stated that the provision fails to state who determines ineligibility and the exact date ineligibility begins. The policy language should state whether ineligibility begins on the date the producer fails to pay the premium by the termination date, the date the reinsured company notifies the producer of the debt and a meaningful opportunity to contest the same, after the producer fails to respond to the written notice by the reinsured company, the date the FCIC verifies that the person has met the criteria for ineligibility, the date the FCIC mails notice to the producer's last known address, or the date that the producer receives notice from the FCIC of ineligibility. The commenter also stated that the proposed regulation should set forth the standards, if any, for reinstatement of producer eligibility and for removal of the producer's name from the ineligible tracking system. The provisions should clarify whether ineligibility as a result of failure to timely pay premiums will result in the FCIC voiding all the producer's policies or only the policy for which the producer is delinquent in paying premiums. The provisions should clearly state that the insured is solely responsible for any indemnities or payments made by the reinsured company on a policy voided by FCIC. The provisions should state that FCIC expressly pre-empts all claims arising by placement of the producer's name on the ineligible tracking system.

*Response:* This provision was intended to allow a producer to become eligible for insurance once the producer repays the debt, enters into an agreement for repayment and the payments are timely made, or files a petition in bankruptcy to discharge the debt. Therefore, the producer who executes an agreement for repayment is eligible while making payments. However, if the producer fails to timely make a payment, the producer is again ineligible and will not become eligible until the debt is paid in full or the producer files a petition to have the debt discharged in bankruptcy. The bankruptcy provisions have also been clarified. Unpaid debts do result in ineligibility in accordance with 7 CFR § 400.459. Section 2(e) relates to eligibility as described in § 400.459 and also describes when crop insurance policies are terminated when unpaid debts are overdue. Therefore, the provision is not illegal, unenforceable or in conflict with the regulations and procedures. Delinquency of any amount due arises on the termination date that the amount was due. This is the date that triggers ineligibility. An example has been added for clarification. Determinations of ineligibility are made in accordance with 7 CFR part 400, subpart U. Policies can only be reinstated if it is determined that the termination was in error. If the producer fails to repay any amount owed by the termination date, the policy is terminated, and the producer later becomes eligible, the producer must submit a new application for insurance. FCIC believes that the provisions clearly indicate that all policies will be terminated in the event a debt is delinquent for any crop. Each application requires the applicant to provide information on prior and existing insurance. The reinsured company has the capacity to verify eligibility, which would result from these questions. It is possible that under some circumstances a replant payment or early loss could be paid before the person is made ineligible and any existing policies voided. For example: The producer is indebted to company A but currently insured with company B. Company A is late certifying the producer as ineligible (after the termination date by 6 months). In the meantime, insurance attaches with company B and a loss is paid. The policy will be voided and the insured will be required to repay any amounts paid under the voided contract.

*Comment:* A reinsured company and an insurance service organization questioned if section 2(g) should be deleted. The commenter stated that it should be the company's discretion to terminate a policy if no premium is earned for 3 consecutive years. This provision is counter to the concept of enrolling all crops that the producer may grow, at least at the catastrophic risk protection level.

*Response:* FCIC has modified the language to state that reinsured companies may terminate policies that have not earned premium for 3 consecutive years.

*Comment:* Comments were received with regard to section 3(c). A reinsured company suggested that these provisions be modified to facilitate future streamlining of the APH process that has been discussed, specifically referencing the concept of optional yield updating. The commenter suggested that the sentences ''If you do not provide the required production report, we will assign a yield for the previous crop year'' and ''The yield assigned by us will not be more than 75 percent of the yield used by us to determine your coverage for the previous crop year'' be removed from these provisions and put in the Special Provisions. The commenter also suggested that the first sentence be modified to read, ''Your production report must be provided to us by the earlier of the acreage reporting date or 45 days after the cancellation date.'' The sentence ''Production and acreage for the prior crop year must be reported for each proposed optional unit by the production reporting date'' should be modified to allow for added land and use of another person's records until the acreage reporting date, which is allowable under the Crop Insurance Handbook. An insurance service organization suggested clarifying the provisions to specify that production reports are required for some crops but not for all crops. Also, consider if the fifth sentence should read ''* * * unless otherwise specified in the policy'' instead of ''* * * by FCIC.''

*Response:* There is nothing in these provisions that preclude streamlining the APH process and since the APH regulations are separate from this policy, reference to optional yield updating will be more appropriately located in the APH regulations. Further, since the consequences of not providing a production report is universal to all crops requiring production reports and do not vary by county, these provisions are more appropriately located in the Basic Provisions. Requirement in the first sentence that the producer provide the previous year's production should not be removed because if removed, it could cause confusion. However, FCIC has amended the first sentence by adding the phrase ''unless otherwise stated in the Special Provisions'' to

allow for any future changes. FCIC never intended to allow use of another producer's records in determining optional units and it is only permitted by the APH regulations and the Crop Insurance Handbook when such records are from another person who shares in the same acreage. Since the producer must also share in the acreage, nothing in the existing provisions preclude this practice. The Crop Provisions will specify when production reports are not required. Further, in the fifth sentence, since the requirement that the amount of production used to determine a claim for indemnity constitutes the production report is contained in the APH regulations, the requirement can only be modified by FCIC.

*Comment:* Commenters questioned if the fifteen days specified in section 3(e) allowed enough time between announcement of an additional price election or amount of insurance and the sales closing date. A reinsured company suggested a minimum of not less than 25 days. An insurance service organization stated that the proposed rule refers to ''maximum'' and ''additional'' price elections for what are referenced elsewhere as ''preliminary'' (or ''established'') and ''projected market'' price elections. It could cause confusion to be able to have a price higher than the ''maximum'' price election. The commenter suggested either replacing these terms, or adding them to the definitions (perhaps as sub-entries under the ''price election'' definition).

*Response:* Although reinsured companies and producers may not have much advance notice, an expected market price will be published by the contract change date. Since contract change dates are usually months before the sales closing date, this provision simply allows FCIC additional time to determine the most accurate expected market price to be used as the price election. Generally, the additional price election or amount of insurance will be on file long before the 15 day deadline. Therefore, the 15 day requirement has not been changed to 25 days as suggested. FCIC has clarified the provision to eliminate confusion between the maximum and additional price elections.

*Comment:* Several comments were received with respect to section 4. A reinsured company and an insurance service organization stated that section 4 indicates that policyholders will receive written notification of all changes, including the ''additional price elections,'' at least 30 days before the cancellation date, although according to section 3(e) those prices may not be available for another 15 days. A reinsured company stated that it is impossible for the company to comply with the sentence which reads, ''You will be notified, in writing, of these changes not later than 30 days prior to the cancellation date for the insured crop'' because it includes all changes in policy provisions, price elections, amounts of insurance, premium rates, and program dates. The Special Provisions are provided to the insured but the actuarial documents are not. It is impossible to notify the insured of a rate change that will affect that person because this rate depends on the insured's APH, and the production reporting date occurs after the date of this notice. The commenter suggested that the section be modified to indicate that price elections (including price addendum bulletins), amounts of insurance, and premium rates are available at the agent's office. An insurance service organization stated that it would simplify the program if companies and agents could include all changes in one piece of correspondence rather than several. Legal counsel for a reinsured company recommended that section 4 of the policy should state that all contract changes are made pursuant to the FCIC's rulemaking authority and are subject to public comment.

*Response:* The section has been clarified to specify that insureds may review or receive copies of all the documents containing the rate, price elections, amounts of insurance, etc. The section has also been clarified to state that the insured will be notified in writing of any changes in the Basic Provisions, Crop Provisions, or the Special Provisions. Introductory language in the Basic Provisions clearly indicates that provisions of the policy are published in the **Federal Register**. However, not all contract changes are made by rulemaking. Changes in terms such as rates and price elections are not subject to public comment.

*Comment:* Legal counsel for a reinsured company stated that his client is compelled to include provisions in its policies regarding the liberalization provisions contained in section 5. The commenter stated that the liberalizations allowed by these provisions have increased the reinsured company's work and costs, and that inclusion of the clause does not constitute, imply, and should not be inferred by FCIC as a waiver or other relinquishment of the reinsured company's right under the Administrative Procedures Act or common law.

*Response:* Inclusion of section 5 in policies sold by a reinsured company does not waive any rights of the company it has not already otherwise waived. No change has been made.

*Comment:* Legal counsel for a reinsured company suggested that program dates be reviewed since the proposed language in section 6(a)(2) causes the acreage reporting dates for some crops to be very close to the premium billing date. For example, in some cases, the acreage reporting date for forage production policies will be June 15 and the current billing date is July 1.

*Response:* FCIC will review the program dates as necessary to determine whether adjustments are needed.

*Comment:* An insurance service organization commented on section 6(a)(3)(ii) and recommended deleting the phrase ''the acreage reporting date contained in the Special Provisions since this is included in the date determined according to 6(a)(1) and (2). They questioned whether this refers to both of these sections, or if there are no fall crops with a late planting period. This would then be easier to follow as, ''* * * the acreage reporting date will be the later of the date determined in accordance with sections 6(a)[(1)&] (2) or 5 days after the end of the late planting period for the insured crop.''

*Response:* The date contained in the Special Provisions for section 6(a)(3) may be different than the date referred to in sections 6(a)(1) and (2). FCIC has clarified that the date may be determined in accordance with both sections 6(a)(1) and (2).

*Comment:* Comments were received with regard to section 6(f). An insurance service organization recommended consolidating the last two sentences as follows: ''If we deny liability for the unreported units, your share of any production from the unreported units will be allocated, for loss purposes only, as production to count to the reported units in proportion to the liability on each reported unit.'' This avoids need to reference ''the yield for actual production history'' (which does not apply to all crops) and ''7 CFR'' (which is not provided with the policy provisions). Legal counsel for a reinsured company stated that section 6(f) should specifically set forth that the reinsured company's decision to determine the insurable crop, acreage, share, type, and practice, or to deny liability, is conclusive upon the producer and FCIC. Alternatively, the regulation and policy language should set forth the standards upon which acreage, share, type, and practice are to be determined by the reinsured company.

*Response:* FCIC has consolidated the two sentences as recommended. Provisions in section 20 indicate that disagreement on factual determinations will be resolved in accordance with the rules of the American Arbitration Association. Making the company's determinations conclusive would conflict with those provisions. Standards applicable to determination of insurance in these situations where the insured fails to file an acreage report for one or more units are currently contained in FCIC's approved procedure.

*Comment:* A reinsured company, legal counsel for reinsured companies, and an insurance service organization commented on the provisions in section 6(g). They asked whether the premium remains the same if the production guarantee or amount of insurance on the unit is reduced to an amount consistent with the correct information. The commenters expressed concern that the provisions do not address the current year, only subsequent years. More importantly, there must be sanctions in the current year. The commenters also asked how and when do the insurers adjust current year's coverage. They state that there should be a cross-reference to section 27 that requires the policyholder to reimburse the indemnity or be subject to voidance of the contract. The commenters also stated that language should be added to emphasize that it is essential for the producer to provide accurate acreage information and that the insurer is relying upon the producer's certification to [these] material facts to establish premium and liability. The commenters were also concerned that section 6(g)(2) does not relate what action the insurer may take upon discovering the incorrect information, which is particularly important if it is discovered while preparing a claim. For example, they ask what *bona fides*, if any, must an acreage measurement service possess, how can a company test such a service's credibility and impartiality, and what authority does the client company have to reject a service's measurements. The commenters also asked what acreage measurement service will be considered acceptable, whether reinsured companies be allowed to charge insureds for performing this service, what documentation is needed, and who makes the determination. The commenters also asked whether there is any tolerance for error and what ''support your report'' means. The commenters state that procedure is needed to ensure that if business is transferred and the receiving company discovers that the insured misreported acreage in any prior year, that the insured is required to provide the documentation specified in section 6(g)(2). In this regard, section 6(g)(2) may prompt transfers. The commenters ask what is the reinsured company's obligation and liability without pertinent procedures and state that section 6(g)(2) should state that the producer will be solely liable for any overstated liability resulting from the incorrect information or from fraud, misrepresentation, or concealment. The regulation should also make clear that the reinsured company is not liable to the FCIC for any overpayment of indemnity or other payments on a policy resulting from incorrect producer certified information or producer fraud, misrepresentation, or concealment. Any liability of a reinsured company for such acts should be governed by the criteria set forth in a previous Manager's Bulletin, which should be expanded to include the aforementioned situations. The proposed regulation states that reinsured companies must verify information pertaining to crop, share, entity, and acreage. The regulation should clearly set forth the sources that the reinsured companies may utilize to verify this information, especially in the absence of information at local FSA offices.

*Response:* If the correct information results in a lower premium, the lower premium will be charged to the producer and liability reduced commensurately. Sanctions are available if the insured misreports information. If the insured has intentionally misrepresented or concealed any material fact, the policy may be voided under section 27 and the insured may be disqualified under section 508(n) of the Act. If the error or omission is inadvertent, no sanctions are available. The insured simply receives only the coverage to which he is entitled. No cross reference is necessary since sections 27 and 6 are under the same policy. Further, there is sufficient language in the policy to put the producer on notice that information must be accurately reported. The crop insurance industry recommends that the burden of certifying acreage report information should be placed on the insured. FCIC assumes that a typical insured will provide accurate information. Therefore, documentation to support the report of acreage that includes, but is not limited to, an acreage measurement service at the producer's own expense, has been required only if the insured materially misreported acreage in a prior year. It is the reinsured company's responsibility to verify that the information used to settle a claim is correct. The insured selects the acreage measurement service. The reinsured company should use its business judgment to determine whether the acreage measurement service was reputable, competent, etc. Since it is the insured's responsibility to procure the acreage measuring service, they bear the cost. Documentation should include the report from the acreage measurement service stating the measured acres. FCIC has revised the provision to refer to ''substantiate'' the reported acres. The intent of this provision is to protect the integrity of the program by increasing the reliability of the information reported. The reinsured company can reject any information reported by the insured that is not accurate, including any information provided by the insured from an acreage reporting service. FCIC has revised the provisions to allow the reinsured company to require the insured to substantiate acreage if the insured misreports information in any crop year. Since the Federal crop insurance program is operated with public funds, FCIC cannot make payments that are not authorized by law. Therefore, if there is an overpayment of an indemnity for any reason, the reinsured company must reimburse FCIC for its share of the overpayment. If the reinsured company fails to follow approved procedures with respect to the verification of information, FCIC may take other actions in accordance with the SRA. FCIC, in cooperation with reinsured companies, will identify sources that may be used to verify acreage and other information. However, since these are procedural matters and the sources may change, the sources should not be included in the policy.

*Comment:* A reinsured company questioned if the provisions in section 7(a) were consistent with the notification requirements in the ineligibility (for debt) procedures, particularly when there is a short time between billing for one crop year and sales closing for the next. The commenter stated that some companies plan to send a billing earlier than the date specified in the Special Provisions to assure that insureds are aware of the amount due in time to meet the notification requirements associated with the ineligible for debt procedures.

*Response:* Section 7(a) is consistent with the provisions in section 2, which state that premium is considered delinquent when not paid by the termination date. This is the date that triggers ineligibility, not the billing date.

Reinsured companies will still be required to send the premium bills to the insured no earlier than the date stated in the Special Provisions. This is to ensure that all insureds are treated fairly and equitably. FCIC will review the premium billing dates and make any necessary adjustments. The provision has also been revised to clarify that the premium due will be considered delinquent if the premium is not paid by the termination date.

*Comment:* Comments were received regarding section 7(b). An insurance service organization suggested modifying the provisions to allow companies to make replanting payments to insureds who may need that money to cover the immediate costs of replanting the insured crop. Reinsured companies and an insurance service organization questioned the provision that reads ''Any delinquent amount may be deducted from any amount owed to you by any United States Government agency or by us.''

*Response:* The Department of Treasury has opined that part of the amount the producer owes a reinsured company for any crop insured under the authority of the Act that has been paid by the United States may be deducted from any amount owed to the producer by any United States Government agency. However, this provision has been deleted since it is redundant with sections 24(a) and 24(e). Since the replant payment is intended to provide funds to the insured to replant the crop, it will not be used to offset other amounts that are owed.

*Comment:* An insurance service organization questioned whether companies have the authority to ''assign'' a price election or an amount of insurance as specified in section 7(d). If not, the last phrase is not necessary, and the rest of this could be incorporated into 7(c).

*Response:* The reinsured company does not have the authority to ''assign'' a price election or amount of insurance when such information is omitted from the application. The producer must elect a price election or amount of insurance or the application will be rejected. However, if in future years the price election or amount of insurance changes and the producer does not elect another price election or amount of insurance, the reinsured company will assign the producer a new price election or amount of insurance as stated in section 7(d). No change has been made.

*Comment:* Comments were received regarding section 8(b). A reinsured company questioned whether the intent of section 8(b)(1) was to deny insurance on all units of a crop if a producer did not perform acceptable farming practices on one unit of the crop instead of charging an uninsured cause of loss on such unit as was done in the past. An insurance service organization stated that sections 8(b)(4) and (5) provide the possibility of insuring what is normally uninsurable if permitted by the Crop Provisions, Special Provisions, or written agreement. The commenter was concerned because sections 8(b)(1), (2), (3), and (6) make no mention of possible exceptions, yet written agreements are allowed to insure practices or types not listed in the actuarial documents. The commenter suggested that some reference is needed for subsections (1) and (2) as well, or these terms could be moved to the opening phrase (though requests would be denied for volunteer crops and crops left for wildlife). An insurance service organization questioned section 8(b)(6), which states that a crop ''used for wildlife protection or management'' is not insured. They stated that questions have been raised in the past about whether all acreage in a wildlife preserve is uninsurable or only the portion of the acreage that will not be harvested. The commenter asked, if the latter, whether the insured acreage should have a different coverage or rate since there is a higher risk of wildlife damage.

*Response:* Section 8(b) has been revised to clarify that any unit will be uninsurable if the conditions in paragraphs (1) through (6) exist, but that such uninsurability will not affect other acreage of the crop. FCIC agrees that a written agreement should be allowed for the circumstances contained in section 8(b)(1) and has amended that section accordingly. A farming practice may be acceptable, but a premium rate previously was not established due to lack of demand. The written agreement will alleviate this situation. If the crop is not adapted to the area, it should not be insurable and there will be no exceptions. Section 8(b)(6) is revised to clarify that a crop used solely for wildlife protection or management will not be insured. Some crop land leases require the lessee to leave a specified number of acres or a percent of the crop for wildlife. For leases that state a specific amount of acreage to be left unharvested, the stated acreage is not insurable. For leases that specify that a percentage of the crop must be left unharvested, the insured person's share will be reduced by that percentage.

*Comment:* An insurance service organization stated that section 9(a)(1) refers to ''crop provisions'' as an exception, section 9(a)(2) refers to ''written agreement'' as an exception, section 9(a)(4) refers to ''crop provisions'' as an exception, section 9(a)(5) refers to ''crop provisions or Special Provisions'' as an exception and section 9(a)(6) refers to ''the policy provisions'' or a ''written agreement'' as exceptions. The commenter stated that the exceptions in section 9(a) (and elsewhere in the policy) might be preferable as ''policy provisions'' rather than switching between ''Crop Provisions,'' ''Special Provisions,'' and ''written agreement.''

*Response:* The exceptions are only stated in the specifically referenced documents. There is no reason to require the insured to search all documents for exceptions that were previously identified. No change has been made.

*Comment:* Reinsured companies, a state commodity group, an insurance service organization, and a member of the Congress opposed the language in section 9(a)(1) that specifies that acreage will not be insurable if it has not been planted and harvested within one of the three previous calendar years. The commenters are concerned that this precludes acreage from being insurable when adverse weather conditions prevent planting or harvesting. They also stated that to bar coverage when a producer was unable to plant and harvest a crop or in instances when the producer lost the crop after planting defeats the purpose of having prevented planting coverage. They stated that this provision would be impossible to administer and that requiring that the crop be both planted and harvested within one calendar year excludes any crop planted in the fall and harvested the following year. This provision also excludes any perennial crop because such crops are not planted every year. Although the intent of this provision was to prevent the coverage of acres that are outside the definition of productive cropland, this provision will also prevent coverage for many acres that still carry the capacity to grow viable crops. The commenter suggested that a reference should be made to section 9(a)(1) in the prevented planting section to define acreage eligible for prevented planting.

*Response:* FCIC has revised section 9(a)(1) to specify that acreage not planted in the three prior crop years because they were prevented from planting or where a perennial crop was previously grown should be considered insurable acreage. Additionally, insurable acreage that had been planted in any of the three prior crop years and was not harvested due to an insured cause of loss should be considered insurable. Section 9(a)(1) has also been amended to delete the word ''calendar''

to recognize crop acreage planted in the fall and harvested the next calendar year. Referencing section 9(a)(1) in section 17 of this rule is not necessary because, if the acreage is not insurable, no payment can be made on such acreage, including a prevented planting payment.

*Comment:* A reinsured company and an insurance service organization questioned the provisions in section 9(a)(2). The reinsured company stated that the section would be impossible to administer, although they did not disagree with the concept. The commenter questioned how the reinsured company would determine if crops produced for food or fiber had been harvested from the acreage for at least five consecutive crop years after acreage had been strip mined. An insurance service organization stated that food or fiber must be defined beyond the exclusion of cover and forage crops. Tobacco is not a food or a fiber, but the commenters question whether it would qualify the acreage. The commenters also state that if food refers to production for human consumption, then corn for silage does not qualify acreage. If the term includes feed for animals, the commenters ask why forage is excluded. The commenter also asks about tree crops. The commenter also recommended deleting the word ''consecutive.''

*Response:* Section 9(a)(2) has been revised to refer to agricultural commodities other than a cover, hay, or forage crop (except for corn silage) that have been harvested from the acreage for at least five crop years after the strip mined land was reclaimed. A definition of agricultural commodity has also been added.

*Comment:* A reinsured company suggested adding the sentence ''In the event that it is common practice to plant a crop relying on water to be delivered by a third party at a later date, only those acres for which adequate water may reasonably be expected may be reported as irrigated,'' to section 9(b).

*Response:* Section 9(b) has been revised to clarify that if the insured has a reasonable expectation of having adequate water, the acreage will qualify for an irrigated practice. However, if the insured knew or had reason to know that the insured's water could be reduced, no reasonable expectation exists.

*Comment:* A reinsured company stated that the phrase ''you may either report and insure the irrigated acreage as non-irrigated, or report the irrigated acreage as not insured'' should be deleted from section 9(c). They stated that allowing the irrigated acreage to not be insured in cases where there is not an irrigated practice sets up a situation for no coverage to be in place if a disaster occurs, and raises questions about noninsured crop disaster assistance program (NAP) coverage. Irrigated acreage in areas without an irrigated practice should be required to be insured; the insured will benefit from a higher APH yield.

*Response:* It is not appropriate to require a producer to obtain coverage for a non-irrigated practice, with its higher premiums, when the acreage has an irrigated practice. However, since insurance on such acreage was available, the insured will not be eligible for NAP benefits on the irrigated acreage. No change has been made.

*Comment:* Comments were made regarding section 10(b). A reinsured company suggested that this provision be deleted because it creates problems with tracking and confusion over tax numbers, tax liabilities, etc. If this provision is retained, the commenter states that procedure must be established. An insurance service organization stated that the second sentence of section 10(b) suggests the company may not know that a landlord (or tenant) is insuring the other's share until the acreage report is submitted. The commenter stated that if this information affects the insured entity or who needs to be on the substantial beneficial interest (SBI) list, the reinsured company must determine whether this information is needed by the sales closing date. The commenter was concerned because no procedure has ever been developed for this possibility and it is difficult to determine what should be specified in the policy provisions until procedure is developed and distributed.

*Response:* FCIC understands that some reinsured companies are currently using these provisions with satisfactory results. FCIC has amended the provisions to clarify that insurance of another person's share must be indicated on the application before it is reported on the acreage report.

*Comment:* An insurance service organization questioned whether it will be necessary to store the date that the insurer accepts the producer's application since section 11(a)(1) has been changed from ''the date you submit your application'' to the ''date we accept,'' a term that needs clarification. The commenter questioned what would happen if a loss is submitted before a timely signed and submitted application is ''accepted'' and processed by the company.

*Response:* The date the application is accepted must be stored by the reinsured company the same as the date of application was previously stored. The provision has been revised to clarify that the application is considered accepted on the date that the insured submits a properly executed application containing all the information required in section 2. This change was made to clarify when insurance begins when an incomplete application is received.

*Comment:* A reinsured company suggested adding the phrase ''or facilities controlled by you,'' at the end of section 12(d) to clarify that failure or breakdown of facilities or equipment controlled by a third party, could be considered a covered loss.

*Response:* The intent of this provision is to cover failure of the irrigation water supply, not failure of equipment or facilities, regardless of who controls them. No change has been made.

*Comment:* A reinsured company questioned why the phrase ''as determined on the final planting date'' was included in section 13(a) because it is not uncommon for acreage planted during the late planting period to be damaged to the extent that replanting is necessary or practical.

*Response:* FCIC has revised this provision to allow this determination to be made within the late planting period.

*Comment:* Legal counsel for a reinsured company had questions regarding provisions in section 14(a)(2), which require a producer to notify the reinsured company within 72 hours of the initial discovery of damage (but not later than 15 days after the end of the insurance period). The commenter asked what the reinsured company's obligation is to the insured if the insured gives notice 80 hours after the initial discovery of damage. The commenter asked whether the reinsured company would reject the claim in this case or is it liable for liquidated damages to FCIC if it does not. The commenter also stated that supposing extenuating circumstances exist, e.g., a death in the insured's family, whether the reinsured company has discretion in light of the proposed SRA. The commenter recommended that the policy give the reinsured company some discretion to accept or reject a notice of loss based on the facts of each case and the ability of the company to appraise the loss in the context of those facts. That is the test a court would apply and the FCIC should not have a different standard. Also, the policy should specifically permit reinsured companies to delay an indemnity payment to any insured who is under investigation by the Inspector General or the Department of Justice involving wrongful claims for indemnities.

*Response:* These notice provisions are intended to protect the integrity of the program by ensuring that the reinsured company received notice in sufficient time to accurately adjust the loss. The provision is revised to provide the reinsured companies with the authority to accept a delayed notice of loss as long as their ability to adjust the loss has not been adversely affected. FCIC approved procedure allows acceptance of delayed notices provided the delay does not prevent the insurer from properly adjusting the claim. Therefore, the reinsured company does have the discretion to accept or reject a notice as requested in the comment and no policy change is necessary. There is no authority to delay the payment of a claim simply because the insured is under investigation.

*Comment:* A reinsured company stated that the word ''settlement'' in section 14(a)(4) should be defined.

*Response:* The word ''settlement'' is self-explanatory. No change has been made.

*Comment:* An insurance service organization commented on section 14(b)(4) that the last sentence should apply to sections 14(b)(1) through (4), as in the current Basic Provisions.

*Response:* The sentence applies to sections 14(b)(1)–(4) and FCIC has revised the sentence accordingly.

*Comment:* Comments were received regarding section 14(c). One reinsured company suggested adding the phrase ''for all units of the insured crop'' after ''insurance period.'' Another reinsured company questioned if the intent was to require that the proof of loss be completed within 60 days after the end of the insurance period.

*Response:* Since insurance is provided on a unit basis, claim settlement should be administered on that same basis. Addition of the suggested language could result in delayed payments for units with early season losses. FCIC considers the claim for indemnity to be synonymous with the proof of loss and requires that it be submitted within 60 days after the end of the insurance period. No change has been made.

*Comment:* An insurance service organization commented on section 14(f) and stated that since the only other reference to notice within 72 hours is in section 14(a)(2), FCIC should consider combining the provisions by adding the phrase ''notice may be made by telephone or in person to your crop insurance agent, but must be confirmed in writing within 15 days'' at the end of section 14(a)(2). If (f) remains separate, the commenter questioned whether it should refer to ''this paragraph'' or ''this section.''

*Response:* Since the provisions in section 14(f) are applicable to the notices required in sections 14(a)(2) and 14(b), it has not been combined with section 14(a)(2). FCIC has revised section 14(f) to refer to the ''section'' rather than the ''paragraph.''

*Comment:* An insurance service organization questioned if section 14(d) of ''Our Duties'' should be modified since future procedures may be based on FCIC's standards rather than ''established or approved'' by FCIC.

*Response:* Under the 1998 SRA, reinsured companies must use FCIC's loss adjustment procedures. In the future, FCIC will always require that all procedures be approved by FCIC before used. No change has been made.

*Comment:* Some reinsured companies and an insurance service organization suggested deleting the reference to Form FCI–78 in section 15(c). A company also suggested deleting the reference to ''a form approved by the Federal Crop Insurance Corporation'' and adding a provision that states how appraisals will be made if hail and fire are excluded as insured causes of loss.

*Response:* FCIC determined the procedures to be used to conduct such appraisals and included them in Form FCI–78. If FCIC wants to make changes in the procedures, it can revise the form. No change has been made.

*Comment:* A reinsured company and an insurance service organization commented regarding the provisions in section 16(b). The reinsured company questioned if acreage is insurable when planted after the late planting period for any reason, except for an insurable cause of prevented planting. The insurance service organization stated that the last sentence which states, ''Such acreage must have been prevented from being planted by an insurable cause occurring within the insurance period for prevented planting coverage'' is confusing since the acreage was planted, but too late for timely or late-planted coverage. Perhaps this should say, ''* * * prevented from being planted timely or during the late planting period * * *''

*Response:* Acreage planted after the final planting date or the late planting period, if applicable, is not insurable unless the acreage was prevented from being planted or it was practical to replant. FCIC has amended section 16(b) to clarify that planting on such acreage must have been prevented by the final planting date or during the late planting period by an insurable cause occurring within the insurance period for prevented planting coverage.

*Comment:* Comments were received regarding section 17(a)(2). An insurance agent opposed the 72 hour mandatory notice of loss requirement after the final planting date if the producer is prevented from planting by such date. The commenter stated that if the substitute crop option is eliminated, this provision is not necessary and it is a cumbersome rule that will necessitate a tremendous amount of effort on the part of the agent to make certain that a producer does not miss this deadline. The commenter also stated that in a year such as 1995 when adverse weather prevented many producers over a large area from planting, an agent must communicate with the producers, explaining the provisions to them, and encouraging them to continue planting, rather than assuring that all of the insureds give notice within 72 hours. The commenter claims that notice would only be beneficial in an area with few prevented planting claims because in an area with a large amount of prevented planting, inspections probably would not even be made. The commenter was also concerned because any time there is a specific date, it forces the agent and companies to have a tracking system to protect clients, which adds to the already burdensome amount of processing that is required. The commenter was concerned that having a prevented planting reporting date during a time span that may be feasible for planting sends a strong psychological signal to producers that they have reached a point that it is time to stop planting, regardless of what the conditions are in the field. The commenter also stated that reinsured companies would be over-loaded with loss notices that may or may not be necessary, possibly becoming expensive and burdensome for a company; and that this would be a new regulation for 1998 that is not necessary. Legal counsel for a reinsured company and the agent questioned what the ramifications would be if an insured notified the reinsured company more than 72 hours after the final planting date. A state commodity group stated that the 72 hour proposal will cause hardships on producers. Many producers plant 10 to 15 different crops, with varying final planting dates. During the planting season, producers who plant a variety of crops are simply too busy to contact their reinsured company. The commenter suggested changing the 72 hours to two weeks. A reinsured company stated that it trusted that such notice would not be considered the same as a ''notice of loss,'' requiring a visit by an adjuster, especially if the

land was located in an area where known prevented planting conditions exist and, if the acreage report did not include prevented planting, the earlier notice would be void. Another reinsured company stated that the issue of the number of required notices should be addressed. An insurance service organization recommended changing the loss notice requirement to 72 hours after the latest final planting date on the policy.

*Response:* The 72 hour notice requirement could become burdensome and cause hardships on producers. Therefore, the provision has been deleted.

*Comment:* Comments were received regarding section 17(b). A reinsured company and an insurance service organization stated that, if circumstances were favorable, increased coverage on unplanted acreage could allow a profit because the only expenses may be the fixed cost of ownership or rent. Input expenses other than those would not be necessary. Therefore, with 65 or 70 percent prevented planting coverage, it may become more economical for the producer to leave land idle rather than incur the expense of attempting to plant. A reinsured company, national commodity group, and farm organizations supported the 10 percentage point increase in the level of prevented planting coverage. The commenters supported the concept that prevented planting levels should be crop specific and should closely reflect a percentage of the pre-plant production inputs to total costs for each crop. One of the farm organizations stated that differentiation by crop is important but that the program's overall complexity should also be considered. An insurance agent, national commodity group, reinsured company, farm organizations, and a state commodity group commended FCIC for making higher levels of coverage available for prevented planting if producers choose to elect them. The commenters stated that optional coverage levels allow producers to tailor their risk management programs to individual financial realities. The national commodity group stated that coverage at the 60 percent level with an option to increase the coverage to 65–70 percent should be adequate, provided prevented planting losses are indemnified for each acre that is not planted (once the threshold of 20 acres or 20 percent of the insurable crop acreage in the unit is met). The current adjustment procedure tended to penalize producers who planted a portion of a unit to the intended crop. A state commodity group urged an increase in the maximum available prevented planting coverage level to 75 percent, particularly if the substitute crop provision is eliminated. An insurance agent, national commodity group, state commodity group, and regional commodity group were apposed to the lower prevented planting coverage available for cotton. An insurance agent and national commodity group expressed a concern that, in certain market conditions, the producer may shift prevented planting from cotton to corn or soybeans due to the possibility of a higher payment for prevented planting and significantly lower premium for corn and soybeans. A national commodity group stated that the percent of variable cost borne by cotton producers in planting a crop is not unlike the percent of variable cost borne by corn producers to plant a crop in the same states especially when seed company technology fees and Boll Weevil Eradication Assessments are taken into account. The commenter further stated that FCIC relied only on USDA regional cost data, not county data. The commenter also stated that any justification for this discriminatory treatment that is based upon a ''cost of production'' rationale is out of place under this program because crop insurance coverage is based on actual production history and price election, not cost of production. On several occasions, the commenters have challenged FCIC's claim that cotton's cost of production is highest for post-planting activities. A national commodity group and state commodity group stated that cotton producers deserve equitable prevented planting coverage without any rate increase since the ratio of cotton's insurance indemnities to its fixed and variable costs are far below those of other crops. The commenters stated that this disparity is even more glaring when indemnities' net of premium as a percent of variable cost or as a percent of a fixed cost are considered. A state commodity group stated that a rolling average of a producer's normal crop rotation should be used to determine losses. The previous year's total crop indemnity divided by prevented planting acres at this year's prices could be used to determine an average. An insurance service organization stated that although offering different prevented planting coverage levels may be more actuarially sound, this will make processing more complex. The commenter was concerned that it could also result in questions from policyholders when the level of coverage they actually have may differ from what they thought they had.

*Response:* Numerous issues are raised by these comments. In light of the comments regarding the disparity of prevented planting coverage between cotton and most other crops, FCIC is making this rule effective for the Cotton Crop Provisions and the Extra Long Staple Cotton Crop Provisions for the 1998 crop year only. FCIC will solicit additional comments regarding the prevented planting coverage level percentage for these crops for the 1999 and succeeding crop years in a future rule.

Some commenters allege that the differences in coverage will encourage shifts among crops, notably from cotton since the coverage is lower. Based on the national average liability, the average payment rate for cotton at 45 percent of the guarantee is $125 per acre ($0.68 average price election) while the payment for corn is $103 per acre ($2.25 price election). Even if the price election for corn were increased to $2.50 per bushel the payment still would be less than cotton ($115 per acre). Some commenters state that the prevented planting returns net of crop insurance premiums should be considered. However, based on additional (buy-up) business for 1996, the difference in producer-paid premium between the two crops is about $9 per acre. Therefore, even on this basis, there is no marked disparity in bottom line dollars to the producer and there should be no impact upon cropping decisions.

Some commenters challenged the concept of basing the prevented planting indemnity upon costs of production, stating that the insurance plan is based on yield and market price. The intent of the prevented planting provisions is to permit producers to recoup some of their costs when it is impossible for the producer to generate income from the insured crop. These provisions were never intended to allow producers to make a profit. To permit profit is to introduce unmanageable and undesirable risks of fraud.

Some of the commenters dispute the use of regional data to establish costs of production, arguing instead that the costs should be developed county by county. Such an approach is impractical and unwieldy due to lack of credible data and is contrary to the law, which directs FCIC to seek administrative efficiencies in its programs to minimize burdens upon producers and reinsured companies.

*Comment:* Comments were received regarding the proposed removal of prevented planting coverage when a substitute crop is planted. A national commodity group recommended that, after the final planting date for a

prevented planting crop has passed, producers be allowed to collect a prevented planting payment and then plant any crop but that such crop not be insurable. This would allow maximum returns from the land without providing any windfall benefits from the insurance program. The commenter stated that most producers are required to have a crop of some type on the land for conservation purposes and, since it will not carry any insurance coverage, production should be allowed. Another national commodity group and a state commodity group stated that they recognize the inherent problems with the substitute crop provisions and that they approve the elimination of the 25 percent coverage when a substitute crop is planted, provided there is adequate coverage when acreage is left unplanted. Farm organizations stated that it is difficult to argue against elimination of the substitute crop provisions; however, long term crop rotations, marketing decisions, delivery commitments, preplant application of inputs, and estimated economic returns from competing crops do enter into planting decisions. The farm organization and a reinsured company stated that weather induced planting changes often represent added costs to producers and, therefore, it may be appropriate to allow some level of coverage if the original crop cannot be seeded. These commenters stated that to reduce the potential for abuse, the provisions should specify a significant reduction in prevented planting benefits (40–60 percent) if an alternative crop is ultimately planted. Another farm organization and a reinsured company recommended that some level of coverage be allowed when a substitute crop is planted because weather induced planting changes may represent a real cost to the producer. Often times the producer has prepared the land for one crop, including the application of fertilizer and herbicides that will not be used by the new crop, and this expense cannot be recouped. A regional commodity group recommended that the provisions be amended so that a producer is able, at the very least, to forego crop insurance protection and plant a follow up crop for harvest after acreage is prevented from planting. The commenters stated that producers who miss the opportunity to plant their crop of first choice still need to retain the ability to create income from their land to cover any fixed costs they incur such as taxes, land payments, equipment payments and living expenses. They feel it is imperative that producers retain the right to keep their land productive.

*Response:* This ''substitute crop'' coverage has been provided for producers with coverage greater than catastrophic risk protection since the 1995 crop year. During the three crop years this provision has been effective, FCIC has received numerous complaints from agents, reinsured companies, commodity groups, and producers, including allegations of abuse, difficulty in establishing ''intent'' as required under those provisions, and other problems.

If a producer is prevented from planting the ''intended'' crop, it is the producer's choice to leave the acreage idle, plant a cover crop, or plant another crop for harvest. Prevented planting coverage should be provided only if the acreage is idle or planted to a cover crop not for harvest. Based on the numerous complaints received, the administrative problems and hazards associated with the substitute crop coverage, and the fact that only one crop is normally produced per acre, per crop year, prevented planting coverage should not be provided when the producer chooses to plant another crop on the acreage for harvest. No change has been made.

*Comment:* Comments were received regarding section 17(d). A national commodity group and a regional commodity group commended FCIC for including drought as an insurable risk for prevented planting. The national commodity group further recommended that such a determination be made on a field-by-field basis rather than on an area wide basis. This is consistent with the per acre unit change proposed for the prevented planting determination. Legal counsel for a reinsured company stated that proposed section 17(d)(1)'s requirement of inclusion of the Palmer Drought Severity Index (Index) as a condition precedent to the receipt of a prevented planting payment on non-irrigated acreage is arbitrary, impractical and exposes reinsured companies to potential litigation or arbitration. Though the Index surely measures a drought's severity, even those droughts that are not classified as severe or extreme may be sufficiently devastating to prevent planting. The commenter stated that when facing a drought, a producer's decision to invest the financial resources necessary to produce a viable crop is based on economics, not whether the Index classifies the drought as severe or extreme. In addition, a drought may, over time, become severe or extreme. The commenter asked what if, at the acreage reporting date a drought is not, according to the Index, severe or extreme, but is later classified as such by the Index. The commenter was concerned because the reinsured company already has denied the producer a prevented planting payment, and the drought's subsequent appearance on the Index is of little benefit to the producer. Forced reliance on the Index causes another problem if the Index is not available when the acreage is reported. The commenter questioned whether the reinsured company must delay its determinations until after it obtains the Index and what liability befalls the reinsured company if it is delayed.

*Response:* Current as well as the proposed prevented planting provisions specify that all prevented planting causes of loss must be general in the area. It is important to provide a reliable source such as the Index to provide consistency when verifying drought as an insured cause of loss in an area. FCIC does not believe that prevented planting payments should be allowed unless other producers in the area were also prevented from planting.

Most drought severe enough to prevent planting will be classified by the Index as severe or extreme by the final planting date. The Index is readily available to interested parties and is updated frequently. Therefore, the Index should be available to all reinsured companies prior to the acreage reporting date. FCIC expects few cases in which a drought that develops into a severe or extreme drought after normal planting times will actually prevent planting. To allow for exceptions would increase the complexity and subjectivity of these determinations, the administrative burdens on reinsured companies, and the litigative risks resulting from these subjective decisions.

*Comment:* A reinsured company stated that in section 17(e) the word ''base'' should be eliminated in all cases.

*Response:* The use of the word ''base'' in section 17 can be confused with the term ''base acreage'' used by FSA in the past. Therefore, FCIC deleted the word ''base'' as suggested.

*Comment:* Comments were received regarding section 17(e)(1). A crop insurance agent disagreed with the provisions in the proposed rule that exclude from eligibility any acreage prevented from being planted that was planted to a substitute crop. The producer should not be penalized a second time for not being able to plant a specific crop. A reinsured company questioned if the determination of eligible acres in the chart is done on a county basis. The commenter also questioned how a company is to obtain previous year's records of prevented planting acres when policies are gained by transfer. A reinsured company stated

that written agreements will only be allowed if the insured has not produced any crop for which insurance was available in any of the four most recent crop years. The commenters indicated that a written agreement may be the only way to provide coverage in many cases. An insurance service organization questioned whether section 17(e)(4), which notes that eligible acreage may be increased to account for added land, is considered a ''written agreement.'' The commenters also stated that the provisions in the table would be clearer if reorganized. Since 17(e)(1)(i) is the only one of the three subsections in which (B) and (C) differ, this table may not be necessary. Combine 17(e)(2) with 17(e)(1)(i)(C) since this is the only situation allowing written agreements and combine 17(e)(4) and (5) with 17(e)(1)(i)(B) to avoid the impression that eligible acreage does not include added land. Add 17(e)(3) to the opening sentence in 17(e)(1). The commenter also stated that 17(e)(1)(i)(B) must be clarified because the heading makes (B) apply to producers who have produced ''any'' insurable crop in any of the last four years, but then limits eligible acres to the maximum acres certified or reported in those years for ''the crop.'' The commenter stated that a producer may have produced corn in at least one of the last four crop years, but who planned to plant grain sorghum this year for the first time, would not have any eligible acres for grain sorghum and a written agreement could not be obtained. The commenter recommended changing the heading above section 17(e)(1)(i)(B) to read, ''if you have produced the crop in any of the four most recent crop years'' instead of ''* * * any crop for which insurance was available * * *'' The commenter also suggested that the heading above section 17(e)(1)(i)(C) be changed to reference ''the crop'' instead of ''any crop for which insurance was available'' to accommodate producers who decide to start producing a crop for the first time.

*Response:* Section 17(e)(1)(i)(B) of the proposed rule excludes acreage reported as prevented planting in a prior year but that was planted to a substitute crop so that the same acres do not qualify two crops in the same crop year. This provision is consistent with the removal of the prevented planting substitute crop coverage.

Eligible acres defined in section 17(e)(1) are determined on a county crop basis. When policies are gained by transfer, reinsured companies can obtain previous years' records of prevented planting acres from the insured, the ceding company, or the FCIC policyholder tracking system.

FCIC agrees that the table contained in section 17(e)(1) should be rearranged, duplicate provisions removed and combined with sections 17(e)(2) and (4), and has revised the table accordingly. FCIC has also revised section 17(e)(1) to incorporate section 17(e)(3) for clarity.

Proposed section 17(e)(1)(i)(C) (redesignated 17(e)(1)(i)(B)) has been amended to indicate that an intended acreage report must be submitted to the insurance provider to provide prevented planting eligible acreage only for a person who has not in any of the four most recent crop years produced any crop for which insurance was available. Intended acreage reports are not necessary for other producers. Any new insured who has produced any crop in any of the 4 most recent crop years for which insurance was available will qualify for prevented planting coverage for those crops and acres for which past acreage and production records are provided in accordance with APH procedures. A provision to increase acreage for new producers has been added that is consistent with the requirements for other insureds.

In most instances, the proposed provisions allow prevented planting coverage based on planting history. If a producer has planted only one crop in the past four crop years, for instance corn, and intended to plant and insure grain sorghum in the current crop year, the producer would be eligible for prevented planting coverage based on a corn production guarantee only. Once the producer plants grain sorghum, the producer will be eligible for prevented planting coverage based on a grain sorghum production guarantee.

*Comment:* A reinsured company questioned the impact and acceptability of intended acreage reports concerning eligible prevented planting acres. The commenter questioned the guidelines for approval of written agreements, and who has the authority to approve or disapprove such agreements.

*Response:* The provisions have been amended so that the use of a written agreement is no longer required to establish eligible acreage. Instead, intended acreage reports will be used. However, the reinsured company will be required to verify that the acreage reported does not exceed the number of acres of cropland in the producer's farming operation at the time the intended acreage report is submitted. The reinsured company will have the authority to accept or reject any intended report.

*Comment:* Comments were received regarding section 17(e)(2). An insurance service organization asked whether ''requests for written agreement under this section must be submitted to us on or before the sales closing date'' is intended to supersede section 18(e), which allows written agreements requested after the sales closing date only if an inspection determines no loss has occurred. The commenter asked if this provision prohibits consideration of a request made shortly after the sales closing date. Legal counsel for a reinsured company asked if section 17(e)(2) pertains to all crops or only to those with increased acreage. A crop insurance agent stated that any new producer who has a viable policy for a crop and who has the ability to produce that crop should be eligible for prevented planting on all cropland acres. The commenter also stated that the sales closing date is a completely unreasonable deadline for a new producer who is trying to start a farming operation. The insurance program should be as liberal as is prudent with new producers and allow them to add to their operation until acreage reporting time without penalty.

*Response:* As indicated in the response above, written agreements are no longer required. Since the producer is making all other insurance decisions by the sales closing date, it is not unreasonable to require the producer to specify the number of acres that the producer intends to plant by the sales closing date. New producers may be eligible for prevented planting acreage on all crop acreage if the requirements in section 17(e)(1)(i)(B) have been met.

*Comment:* An insurance service organization suggested that the provision contained in proposed section 17(e)(3) that states, ''the total number of acres requested for all crops cannot exceed the number of acres of cropland in your farming operation for the crop year'' be revised to allow for double-cropping, as in section 17(f)(5).

*Response:* This provision, now located in section 17(e)(1) is revised to account for double cropped acreage.

*Comment:* Comments were received regarding section 17(e)(4). A reinsured company asked if all land added by the insured after the sales closing date was ineligible for prevented planting coverage. An insurance agent disagreed with requiring the producer to provide documentation on or before the sales closing date for newly added land because a March 15 deadline is not realistic and land changes hands into the planting season for many legitimate reasons including retirement, health, another career, financial considerations, etc. The commenter stated that the new producer should not be denied coverage

just because the farming operation changed hands after March 15. The commenter was also concerned that it is difficult to obtain form 423 from FSA to determine eligible acres and whenever a farming operation is changed and the farm is reconstituted by FSA, there can be weeks of delay before the form is completed. The commenter stated that this rule again imposes an unnecessary burden on agents. It will force them to spend a great deal of time putting a process in place that attempts to make certain that none of their insureds miss an imposed deadline. The commenter was concerned that this is the time of year that agents need every available minute to be working with their clients concerning their coverage. Producers should be focused on sound decisions concerning their risk management, not focusing on what new deadline they have to meet. The commenter also stated that with the substitute crop provision eliminated, there is no need to have any other deadline in place other than acreage reporting. There is no date that is acceptable and crop insurance should not be in the business of trying to dictate to producers a date by which all changes in a farming operation must take place. The commenter stated that this rule directly conflicts with the farm program objectives of farming for the market. If the market dictates that a producer needs larger acreage to be effective, that should be allowed by our rules. The converse is also true. If a producer decides to reduce the size of the farm, it still is eligible for acres over and above the size of the farm, under the proposed rule. The commenter stated that eligible acres should be determined at planting time by the total cropland acres. The limitation to the number of acres previously planted to a crop is prudent; however, newly added land should be eligible for prevented planting up to the newly established cropland acres on any crop that the producer has insured. This is a common sense approach that would eliminate burdensome paperwork and eliminate a deadline that will cause problems. Legal counsel for a reinsured company stated that land rented or bought after the sales closing date might be ineligible for prevented planting coverage under the proposed provisions in section 17(e)(2) and (4). While the acreage reporting date may improperly permit insureds to state with the benefit of hindsight, what their intent was, the use of written agreements in the fashion proposed is not an adequate solution. The commenter suggested that the actual production history deadline date could be used.

*Response:* These provisions, now included in section 17(e)(1)(i), have been revised to allow an increase in eligible prevented planting acres provided the producer submits proof that additional acreage was purchased, leased, or released from any USDA program in time to plant it for the insured crop year. No cause of loss that will or could prevent planting may be evident at the time the acreage is purchased, leased, or released from the USDA program.

*Comment:* Comments were received regarding section 17(f)(1). A reinsured company suggested that the section be modified to read ''* * * 20 contiguous acres...'' The commenter suggested changing the phrase ''whichever is less'' to read ''whichever is larger'' and also suggested that the term ''insurable crop acreage in the unit'' be defined. Another reinsured company questioned if 20 acres or 20 percent was the correct acreage limitation for the unit. The commenter recommended a minimum figure be established for the entire farming operation based on cropland acres. Legal counsel for a reinsured company recommended that section 17 be amended to exclude prevented planting payments when the producer is prevented from planting a small number of acres. For example, if a producer is prevented from planting five acres on a 100 acre farm, the producer should not be entitled to a prevented planting payment for the five acres. The commenter stated that failure to incorporate such a change will increase indemnity payments and overall administrative costs of the program. Another legal counsel for a reinsured company indicated that the phrase ''within a field'' contained in section 17(f)(1) is not defined or used elsewhere in the section.

*Response:* Provisions are necessary to avoid prevented planting claims when only a small number of acres are prevented from being planted. FCIC has amended section 17(f)(1) to require that at least one contiguous block of land equal to 20 contiguous acres or a contiguous area constituting 20 percent of the insurable crop acreage in the unit, whichever is less, be prevented from being planted in order to qualify for a prevented planting payment. This change will reduce prevented planting payments for pot-holes and other small portions of fields that are wet in most years although planting occasionally may be possible. The phrase ''whichever is less'' is appropriate. There is no reason to define the phrase ''insurable crop acreage in the unit'' since units, insured crop, and insured acreage are defined elsewhere in the policy.

Once the minimum acreage threshold has been met, all acres should be indemnified. A minimum figure should not be established for the entire farming operation based on cropland acres because in very large farming operations, that could result in a substantial number of acres ineligible for prevented planting coverage.

FCIC has defined the term ''field'' for clarity. FCIC has also amended section 17(f)(1) to specify that all acreage in a field will be presumed to have been intended to be planted to the same crop that is planted on the field unless the prevented planting acreage constitutes at least 20 acres or 20 percent of the insurable acreage in the field and the producer can prove that both crops were previously planted in the same field in the same crop year.

*Comment:* A reinsured company questioned if the phrase ''in which the insured crop was grown on the acreage'' in section 17(f)(4) allows rotation of double-cropping so that the acreage need not be double-cropped each of the last four years to be eligible for prevented planting.

*Response:* The double-cropped acreage would qualify for prevented planting as long as the insured crop was double-cropped in each of the last four years that it was grown.

*Comment:* Legal counsel for a reinsured company stated that the terms of FCIC's proposed coverage for prevented planting are inherently inconsistent. On the one hand, FCIC is eliminating its substitute crop provisions, while on the other hand the FCIC would require written agreements to be submitted by sales closing dates on base eligible acres on which the insured has not produced any crop for which insurance was available in any of the four most recent crop years. This requirement effectively forecloses producers, particularly those in the northern plains states, from responding to market signals. Similarly, section 17(e)(3), which indicates the number of acres requested cannot exceed the amount of cropland, conflicts with section 17(f)(4), which appears to permit double cropping.

*Response:* The comment misinterprets the proposed provisions. Section 17(e)(1) requires only those producers who have not produced *any crop in any of the four most recent years for which insurance was available* to establish eligible acres in writing. In all other instances, either the number of contracted acres (for contracted crops) or the greatest number of acres of the insured crop planted or insured in any

of the four most recent years serves as the basis to determine eligible prevented planting acres. No provision contained in this rule restricts a producer from responding to market signals and planting, or attempting to plant, any amount of any crop he or she desires. However, in most instances, prevented planting compensation will be based on the number of acres of an insured crop that was planted in the past. As stated above, FCIC has revised the provisions of section 17(e)(3) (now in section 17(e)(1)) to account for double-cropped acreage.

*Comment:* Comments were received regarding section 17(f)(5). A reinsured company questioned how a company would know if any crop from which a benefit is derived under any program administered by the USDA is planted and fails. The commenter also suggested modifying the sentence from may be hayed or grazed ''* * * after the final planting date for the insured crop * * *'' to ''* * * 60 days after the final planting date for the insured crop * * *'' An insurance service organization stated that this section refers to ''other than a cover crop which may be hayed or grazed after the final planting date for the insured crop.'' The commenter questioned whether acreage that has a cover crop that is ready to be hayed or grazed would ever qualify for prevented planting.

*Response:* Reinsured companies must question insureds to determine if any crop was planted for the crop year on the acreage being claimed for prevented planting. Producers should not be denied grazing or haying benefits for 60 days after being prevented from planting. In many instances, cover crops are grown until preparation for planting occurs in the spring. If the producer was unable to remove the cover crop and plant a crop, such a cover crop could be hayed or grazed soon after the final planting date and a prevented planting payment would still be owed.

*Comment:* A reinsured company questioned how the insurer will know if a cash lease payment is also received for use of the same acreage in the same crop year as specified in section 17(f)(6), particularly if it occurs after the prevented planting payment has already been received.

*Response:* Reinsured companies must question insureds to determine if a cash lease payment is, or will be, received for the acreage being claimed for prevented planting. Any insured who claims prevented planting on acreage they have cash leased would be misrepresenting a material fact and could be subject to civil and false claim penalties.

*Comment:* A reinsured company stated that they did not disagree with the concept of section 17(f)(7) but that it is inconsistent with freedom to farm and is unenforceable.

*Response:* The requirement that prevented planting coverage will not be provided for any acreage for which planting history or conservation plans indicate that the acreage would have remained fallow for crop rotation purposes is necessary to protect the integrity of the program. FCIC is charged with establishing an actuarially sound insurance program, and relying upon ''intentions,'' without evidence to support such intentions, is not an appropriate manner of achieving actuarial soundness. For example, if half the acreage in a farm has remained fallow every other year for the past ten years to maintain a summerfallow rotation, this is evidence that this is a normal practice. If such patterns exist, this provision is easier to administer than if the reinsured companies were forced to determine whether the producer actually intended to plant a crop. Since coverage for prevented planting now begins on the previous crop year's sales closing date for carry-over policies, producers could decide to claim an intent to plant acreage where the cause occurred months earlier in order to profit from the insurance program when they never planned to plant a crop. While the denial of prevented planting coverage may adversely affect some producers who genuinely intended to plant a crop, given the inability to prove intent to plant and in order to protect the integrity of the program, FCIC must retain the provision. No change has been made.

*Comment:* Comments were received regarding proposed section 17(f)(9) (redesignated 17(f)(10)). A reinsured company stated that they did not disagree with the concept of section 17(f)(9) but that it is an unenforceable provision. The commenter asked if capital on hand was considered proof that inputs were available. An insurance service organization stated that the burden of proof is placed on the producer to demonstrate ''he or she had the inputs available to plant and produce a crop.'' The commenter asked what guidelines have been developed to determine that an insured has ''inputs available to plant and produce a crop'' and what evidence will be considered acceptable for the ''proof.'' The commenter believes that instead of reducing the costs associated with prevented planting, FCIC has put forth an indefensible proposal that will only add to the administrative expense of the program.

*Response:* Since the prevented planting period could begin on the sales closing date for the previous crop year for many producers, many producers could know that they were prevented from planting prior to the sales closing date and planting period. These producers would be in a position to claim the intent to plant higher valued crops than they normally plant. FCIC has revised the provision to clarify that proof of inputs is only necessary where there is a deviation from normal planting practices. For example, the producer has rotated crops between corn and soybeans in alternate years and this was the year the rotational pattern showed that corn would normally be planted, if the producer seeks a prevented planting payment for corn, the reinsured company does not have to determine whether the insured had sufficient inputs. However, if the producer seeks a prevented planting payment for soybeans, the reinsured company would be required to determine whether the producer has sufficient inputs. Capital on hand would not be considered proof of inputs. If the producer could not produce receipts for seed, fertilizer, herbicides, etc., the lease of equipment or labor, or specific land preparation, it will be presumed that the crop usually planted by the producer was the crop that the producer intended to plant. While this provision may preclude a producer from receiving benefits for a crop that he genuinely intended to plant, the producer would still be eligible for a benefit on the crop usually planted and the need to protect program integrity outweighs its disadvantages. Since this situation should be rare, it should not impose an undue burden on the reinsured company.

*Comment:* A reinsured company stated that proposed section 17(f)(11) (redesignated 17(f)(12)) is contrary to the freedom to farm concept. The commenter also questioned how the insurer would know if the crop was planted in one of the last four years.

*Response:* Prevented planting coverage will not be provided for any acreage based on a price election, amount of insurance or production guarantee for a crop type the insured person did not plant in one of the four most recent years. As stated above, FCIC has a responsibility to protect the integrity of the program. Allowing producers to claim prevented planting payments for crops for which there is no evidence that they intended to plant would adversely affect program integrity. While this may result in some

producers not receiving benefits, it would be impossible to maintain actuarial soundness when such exposure to unnecessary risk exists. Since most crops have a production guarantee based on actual production history, records are an integral requirement. Use of such records would seem the proper way to verify previous crops produced. However, FCIC has created an exception for new producers that qualify for coverage under section 17(e)(1)(i)(B).

*Comment:* Comments were received regarding section 17(g). A reinsured company stated that this section may generate a moral as well as a morale hazard, since producers may claim prevented planting for marginal land never intended for planting. This is contrary to the intent of this policy, which is to provide disaster based insurance coverage, not acre by acre coverage. Legal counsel for a reinsured company stated that proposed provisions allowing a prevented planting payment on a per acre basis add incalculable costs to the loss adjustment process. The commenter stated that loss adjusters must find the acres that are prevented from being planted, measure them, verify inputs and calculate the loss. Also, under the proposal, insureds can ''buy-up'' their coverage which permits producers to be indemnified as much for prevented planting as for failed planting. Neither the Cost-Benefit Analysis or the narrative in the **Federal Register** provide the level of detail needed to permit meaningful comment on FCIC's conclusion that higher rates will not be needed. The commenter further stated that paying prevented planting claims on a per acre basis will result in software problems equal in magnitude to the so-called ''year 2000'' problem. Loss records are kept by unit and to pay claims by acre will require a complete revision of the reinsured company's and FCIC's loss adjustment programs. In this regard, those programs will need to deduct from final claims paid on a unit basis the amount paid for prevented planting on an acre basis. Accordingly, the commenter stated that FCIC has no basis in fact to conclude, as it did in its 1997 Cost-Benefit Analysis, that its proposal will simplify program operation. A national, two state and a regional commodity group stated that they commend FCIC's decision to pay prevented planting acres on a ''per acre'' basis. Another national commodity group stated that they strongly support the change from computing the prevented planting indemnification on a unit basis to a per acre basis after the deductible of the lesser of 20 acres or 20 percent of the eligible acreage in a unit is met. This change provides the producer the opportunity to more closely recover his actual losses associated with prevented planting on a limited number of acres within a unit without indirectly penalizing him for efforts to plant the balance of a unit in a timely, profit maximizing fashion. An insurance service organization stated that they received one comment recommending prevented planting coverage be provided on a unit basis rather than on an acre-by-acre basis. The commenter stated that prevented planting coverage on a unit basis will encourage the insured to plant the acres if at all possible. The commenter asked why separate units for planted and prevented planting acres should be established when units by planting dates are not otherwise allowed.

*Response:* The other requirements of section 17 must also be met before a prevented planting payment is made. If the producer cannot prove that inputs were available to plant any acreage, then no prevented planting payment will be made. If the producer has previously planted marginal acreage, any prevented planting payment will be based on the lower yield for such acreage. No change has been made.

As noted in both the Cost-Benefit Analysis and **Federal Register** narrative, recent prevented planting data indicate that the net costs are expected to be small because the cost and liability associated with substitute crops, which will be reduced when that provision is eliminated, offset the additional cost and liability associated with adding a per-acre basis for payment. Experience data for 1996 demonstrate that 77 percent of declared prevented planted acres occurred in circumstances in which no acreage of that same crop was planted within the unit. Similar results appear in 1995. The implication is that most producers who are prevented from planting have not been able to plant any acreage in the unit and, therefore, already have received the equivalent of acre-by-acre payments. Added outlays would be associated with prevented planted acres where some acreage in the unit is planted, but realized production exceeds the guarantee. In 1996, about 178,000 acres fell in this category, accounting for about $5.6 million in indemnities. Data for 1996 also indicate that some acreage that did not receive an indemnity under the prior regulation would receive a payment under this rule. The increased indemnity is estimated to be about $7–8 million. These data clearly indicate that the effect is small.

Even with the ''buy-up'' provisions, prevented planting compensation under this rule cannot equal compensation given in the event of a failed crop as stated in the comment from the legal counsel. The maximum coverage offered is 70 percent of the *guarantee* for timely planted acres. Therefore, the maximum compensation the producer could receive is 70 percent of the indemnity paid if all acreage of the crop had failed.

Maintaining loss records for prevented planting payments will be no more complex than maintaining records for any unit. It will not be necessary to deduct the amount of a prevented planting payment from the amount of a final claim. This calculation is not required by this rule. No change has been made.

*Comment:* An insurance agent recommended that the CAT level of coverage for prevented planting be limited to a payment based upon basic units, and that the buy up coverage should be eligible for acre by acre payments. Too much coverage at the CAT level encourages the producer to ''take a chance'' rather than make an informed decision based upon sound risk management principles. There is more incentive for the producer with many acres to elect CAT coverage, particularly if the payment is made on each acre, the major risk is prevented planting, and there is no premium impact. The producer who elects additional coverage should receive additional benefits to compensate for the fact that the producer no longer has substitute crop provisions.

*Response:* The argument presupposes that the chance of prevented planting is the dominate consideration regarding choice of coverage level. If this is the case, and producers can continue in business over the long term with the catastrophic level of coverage, the interests of a majority of producers in the county may be best served by this choice. No change has been made.

*Comment:* A reinsured company recommended that, in the prevented planting provisions, FCIC remove the crop specific nature of the proposal and consider only those acres that cannot be planted to any crop as eligible for a prevented planting payment. The commenter also suggested that FCIC establish a non-disappearing deductible as a percentage of cropland acreage that must be exceeded to qualify for a prevented planting payment. Additionally, the commenter suggested that FCIC determine a per-acre payment amount based on average production costs in the county.

*Response:* The recommended changes, which result in a totally

different concept for prevented planting coverage than in the proposed rule, could not be accomplished without the benefit of public comment. FCIC has reviewed the recommended coverage and determined this concept requires more study to determine if it is acceptable to all interested parties. No change has been made.

*Comment:* An insurance service organization commented that crop insurance industry representatives had developed a total cropland prevented planting proposal based on acres not planted after the planting windows for all crops had expired. Industry representatives believed this proposal was consistent with the intent of the Federal Agriculture Improvement and Reform Act of 1996 (1996 Act) in that the coverage did not induce crop specific behavior. The proposal advanced by FCIC differs materially. Due to the short comment period and the complexity of the subject, there was inadequate time to develop a full response, including actuarial analysis and total cost of administration, to FCIC's proposal. FCIC must provide companies with the necessary support to defend against challenges to the enforcement of the ''intent'' and ''proof of intent'' clauses, from the additional loss adjusting expenses incurred by companies in implementing this program, and from compliance issues that arise out of confusion generated by this rule. Further, FCIC has consistently under-estimated the costs associated with its prevented planting provisions. FCIC has not addressed the matter of increased costs incurred by private companies or the potential for private companies to suffer excessive underwriting losses associated with this rule. Instead, it has only expressed in its analysis that because of the small expected average rate impact, any changes in reimbursements to private companies for delivery or any underwriting gains are also expected to be small. At a time when the administrative subsidy to private companies for delivery of the federal program has been reduced by FCIC, there is no room for and FCIC should not anticipate that private companies will bear the cost of this proposal.

*Response:* FCIC reviewed the insurance service organization's prevented planting proposal prior to publication of this rule, as well as other proposals. This rule incorporates many elements or concepts of those proposals. The total cropland concept is inherent to this rule in that eligible acres are defined by the producer's history. The provisions contained in this rule simplify program administration and will reduce administrative costs compared to current prevented planting provisions (e.g., removal of the substitute crop coverage, simplification of determining eligible acreage, reduction in the number of agreements in writing to determine eligible acreage, etc.). Therefore, reinsured companies should not need additional resources, nor should they incur additional costs to implement the overall prevented planting changes contained in this rule.

*Comment:* An insurance service organization stated that the proposed rule for prevented planting is built, in part, around the ''intent'' of the farmer to plant. Industry calls into question the defensibility of determining ''intent'' from a legal and managerial standpoint. The commenter provided data published by the National Agricultural Statistics Services (NASS) showing that the differences between intended and planted acreage (total cropland) at the state-level are relatively stable. However, the data demonstrate that crop-specific differences between intended and planted acres are magnified within a state. The commenter stated that the differences will be even greater at the farm level. This indicates the difficulty associated with monitoring the prevented planting proposal. It will require additional dollars to deliver this type of program in order to maintain the integrity of the program.

*Response:* Without examining the intent of a producer to plant a crop, producers could collect indemnities even when they did not intend to plant a crop or claim an intent to plant a higher valued crop in order to maximize their payments. Therefore, intent must be examined to protect the integrity of the program. The provisions have been revised to only require an examination of intent when the producer deviates from previous planting practices. Therefore, the additional costs associated with the program should be minimal. No change has been made.

*Comment:* An insurance service organization stated that the crop specific nature of the prevented planting provisions contained in this rule are inconsistent with Freedom to Farm.

*Response:* The comments presupposes that producers select the crop to plant based on available insurance coverage. This supposition is contrary to the intent of the 1996 Act, which is to allow producers to maximize their profits through the use of available markets and prices. It is possible that producers may be denied prevented planting coverage when they genuinely intended to plant the crop. However, to protect the integrity of the program, such provisions are necessary and reduce the administrative burdens on the reinsured companies, which would otherwise have to ascertain the intent of the producers. The rule authorizes payments for prevented planting in a sound insurance manner. No change has been made.

*Comment:* An insurance service organization stated that problems will be encountered with this rule because of the degree of the over-lap of the planting windows for the various crops by state. Absent from this rule is any discussion or analysis of the impact of final planting dates in relation to the prevented planting coverage. Final planting dates are crucial in determining eligibility for prevented planting benefits. If final planting dates are too early, then a producer may be able to claim prevented planting benefits even though the producer is still able to plant within standard practice for the crop and location. This will lead to higher than expected delivery expense compared to the industry proposal because more claims will be processed.

*Response:* FCIC will review final planting dates and revise them as necessary. However, to maximize coverage and a potential for revenue, most producers will elect to plant some other crop if land becomes plantable after the final planting date for one crop, and thereby establish 100 percent of a crop insurance guarantee. No change has been made.

*Comment:* An insurance service organization stated that, in certain situations, previous land use and pre-plant input decisions will narrow the set of crop choices and substitution among crops. Industry will be required to manage additional information and data in order to implement the proposed rule and maintain program integrity. Within the context of the Paperwork Reduction Act and program simplification, requiring companies to obtain, verify and retain additional paperwork and information from producers does not make sense.

*Response:* FCIC has revised the provisions to narrow the cases in which reinsured companies must examine evidence of inputs. Since the examination of inputs was required in previous prevented planting provisions, this change will reduce the burden on reinsured companies. No change has been made.

*Comment:* Reinsured companies and an insurance service organization commented on the provisions of section 18. They state that there are legitimate reasons for written agreements to be valid for more than one year, especially

if no substantive changes occur from one year to the next. Limiting written agreements to one year only increases administrative cost, complexity and opportunity for misunderstanding and error, and flies in the face of efforts to simplify the program and reduce its administrative expense. The commenter also stated that written agreements should be effective for more than one year because there is already an exception since written agreements to establish units are continuous (unless the farming operation changes significantly). The commenters also question how often written agreements are incorporated into the actuarial documents within one year. Often, policyholders and reinsured companies must duplicate their efforts to request reissuance of written agreements because this does not happen. The commenters state that FCIC's legal counsel objects to the concept of written agreements, which purportedly allows exceptions for those ''in the know,'' while others may not be aware the possibility exists. The commenters asked whether these provisions can be revised to simplify renewals. The commenters suggested that the policy should require the insured to pay the cost of inspections necessary to obtain a written agreement because there are many instances where there is no economic reason or incentive for a company to pursue such agreements. The commenters also suggested that sections (a) and (e) be combined since both deal with deadlines for written agreement requests. They stated that the response to this comment in prior final rules has been that the sales closing date is intended to be the deadline with only limited exceptions. However, 7 of the 13 written agreement types listed in the 1998 Crop Insurance Handbook allow requests at acreage reporting time and one allows the request after acreage reporting. Of the 6 types with a sales closing date deadline, 4 are specific cases of a practice or type not listed in the actuarial materials, which is curious since the general type of unrated practice, type or variety can be requested at acreage reporting time. So, the exceptions seem to outnumber the rule. Many of the situations calling for written agreements do not become apparent until the acreage report is received. Therefore, the commenter again suggests this provision might be less misleading if the acreage reporting date exception noted in (e) were incorporated into (a). The commenters stated that the provisions in section 18 that specify timing and content of the FCI–2 written agreement should not be part of the insurance policy. New insureds would not have this information until it is too late to request a written agreement. They state that this should have been reviewed by the insurance agent prior to acceptance of the application or issuance of the crop insurance policy. The commenters also stated that some of the written agreement provisions need to be carefully considered and compared to current procedures and comments to the Written Agreement proposed rule before the deadlines and annual status of written agreements are mandated in the Basic Provisions.

*Response:* Written agreements are intended to change policy terms or permit insurance in unusual situations. If such practices continue year to year, they should be incorporated into the policy or Special Provisions. It is important to keep non-uniform exceptions to a minimum and to insure that the insured is well aware of the specific terms of the policy. There are no exceptions to the timing or duration of written agreements except as provided in section 18. The provisions have been amended to indicate that written agreements may be submitted after the sales closing date only if the producer demonstrates that he or she was physically unable to apply prior to the sales closing date or in accordance with any regulation which may be promulgated under 7 CFR part 400. FCIC will be more vigilant in incorporating changes to the policy made by written agreement into the actuarial documents.

FCIC does not believe that a producer should bear the cost associated with any inspection done for the purposes of a written agreement. Such costs are a part of servicing the policy and therefore, are already compensated by the expense reimbursement under the Standard Reinsurance Agreement.

Section 18 was added to the Basic Provisions so that this duplication of information could be eliminated from all Crop Provisions. This information is necessary to provide authority for policies to be altered where the policy specifically allows the use of a written agreement.

*Comment:* Legal counsel for a reinsured company stated that FCIC's authorization of reinsured companies to use written agreements to alter the terms of published regulations is illegal and unwise. The commenter stated that Congress conferred on the FCIC, not on dozens of insurance companies, the rule-making power to define the terms and conditions for insurance. Congress did not confer upon the FCIC the authority to delegate its exclusive rulemaking authority to private contractors. The commenter also stated that neither the FCIC nor its contractors may amend rules and regulations in the **Federal Register** by private written agreement. The comment also indicated belief that the provisions of this section are prohibited by the Office of Management and Budget ''Policy Letter on Inherently Governmental Functions,'' 57 FR 45096, 45100, ¶ 5 (September 30, 1992). The commenter stated that this section will result in written agreements being used as marketing gambits for agents and policyholders by inviting them to compete with lenient agreements that will permit the sale of insurance by a variety of devices after the sales closing date. Finally, the commenter stated that section 18 is a trap for reinsured companies. On one hand, the salutary purposes of the freedom to farm legislation must be accommodated by allowing insureds to react to market signals. On the other hand, the timing of those signals may invite moral hazards. Faced with two mutually exclusive and equally unhappy alternatives, FCIC has decided to abdicate responsibility. The commenter states that section 18 gives each insurer the choice of rejecting a written agreement and declining coverage (thereby causing potential for uninsured losses of the policyholder) or accepting a written agreement and exposing itself to the hindsight of FCIC's Compliance Division.

*Response:* FCIC has not delegated its rulemaking authority to the reinsured companies. In many cases, reinsured companies must still get FCIC approval before providing insurance by written agreement such as in cases involving unrated land. Further, even if the reinsured company has the authority to approve written agreements, criteria published by FCIC still must be met. Therefore, reinsured companies do not have the authority to revise or modify the terms of the policy except as provided by FCIC. All reinsured companies are doing is applying such criteria to their insureds' situation. The use of written agreements should not provide any competitive advantage since they must specifically be authorized in the policy and are available to all producers of the crop. No change has been made.

*Comment:* Reinsured companies, an insurance service organization, and legal counsel for a reinsured company commented on section 20. The commenters questioned whether using the rules of the American Arbitration Association (AAA) for resolution of disagreements has been satisfactory and

whether utilization of the intermediate ''two appraisers, umpire, etc.'' has been considered. The commenters also stated that the language ''for FCIC policies'' can be deleted because, effective with the 1998 crop year, FSA offices are no longer delivering crop insurance policies. Section 20(a) states that disagreements on any factual determination between the insured and the company will be resolved in accordance with the rules of the AAA. The commenters state that this must be clarified so that this only means the association's rules will be followed, not that its personnel will be involved in the arbitration since they are expensive and are not familiar with crop insurance. Section 20(b) reads ''No award determined by arbitration can exceed the amount of liability established or which should have been established under the policy.'' The commenters stated that this should read ''arbitration or appeal'' since both are mentioned in 20(a). The commenters stated that section 20 and section 25 are at odds with each other. Under these two sections, arbitrators have jurisdiction over questions of fact and the courts have jurisdiction over questions of law. Moreover, under the policy, both can grant monetary relief. Bifurcated proceedings are costly and unnecessary. The commenters stated that the policy should provide for mandatory, binding arbitration. Such alternative dispute resolution is consistent with public policy. At most, legal action should be an alternative route, with insureds able to select one, but not both actions.

*Response:* In most instances, arbitration by the rules of the AAA has been a satisfactory and desirable solution to policy disputes. FCIC has not received any recommendations providing alternatives. The provisions are clear that only the rules of AAA will be used. Since the authority for FCIC to deliver policies directly to insureds still exists, provisions referencing FCIC policies will be retained in case they are needed in the future. FCIC has revised section 20(b) to reference ''arbitration or appeal.'' The provisions clearly state that disagreement on any factual determination will be resolved by arbitration. However, if arbitration does not result in agreement, FCIC believes the insured producer should be able to seek resolution through legal action as authorized in section 25.

*Comment:* An insurance service organization questioned whether section 21(b)(3) should specify that ''optional units'' may be combined rather than just ''units.''

*Response:* Section 21(b)(3) should refer to optional units and has been amended accordingly.

*Comment:* An insurance service organization stated that, under section 23, the amount the reinsured company is allowed to retain should be increased from 20 percent to 40 percent due to the increased costs and paperwork.

*Response:* 7 CFR § 400.47 limits the amount to 20 percent of the premium. No change has been made.

*Comment:* A reinsured company and an insurance service organization had comments regarding section 24. They stated that the phrase ''For FCIC Policies'' should be deleted since all MPCI policies will be with reinsured companies beginning in 1998. They also stated that the phrase, ''or any part thereof'' after ''per calendar month'' in the first sentence of section 24(a) under ''For Reinsured Policies,'' that presently is in the regulations should be retained. The commenters were concerned that the second sentence states ''interest will start on the first day of the month following the premium billing date'' but does not address subsequent months. The commenters also suggested that the following provisions should be incorporated ''For Reinsured Policies:'' ''Any amount illegally or erroneously paid to you or that is owed to us but is delinquent will be recovered by us through offset by deducting it from any loan or payment due you under any Act of Congress or program administered by any United States Government Agency, or by other collection action. No insurance will be available until the debt is paid or a collection plan is implemented.''

*Response:* The 1996 Act still authorizes FCIC to offer insurance directly to insureds under certain conditions. Therefore, these provisions must remain. FCIC agrees that reinsured companies should be able to collect interest for a portion of a month and has revised the provision. The phrase ''interest will start on the first day of the month following the premium billing date'' refers to the date interest begins to accrue. The provision has been clarified. In certain circumstances, part of a debt owed by an insured under a reinsured policy may be collected by offset from payments made by other United States government agencies. However, such recovery is limited to the amount of the debt that was paid by FCIC.

*Comment:* An insurance service organization stated that section 25(c) is entirely too vague and may not be given any effect by a court. It must be rewritten to read ''You may not recover compensatory or punitive damages or attorney's fees under this contract. Your right to recover damages of any kind or attorneys' fees is limited or excluded by Federal regulations.''

*Response:* Section 25(c) is only intended to notify the insured that Federal Regulations and other sections of the policy, such as section 26(a), may provide for limitations or exclusions on the recovery of damages, interest, fees or costs. The provision is clearly stated and has not been changed.

*Comment:* An insurance service organization stated that section 26(a) conflicts with section 25(c) unless rewritten as suggested above.

*Response:* These provisions are complementary, not in conflict.

*Comment:* Comments were received regarding section 27(a). A reinsured company questioned whether it is the intent of this provision that voidance would occur only after the legal system determined fraud. An insurance service organization stated that this provision should be rewritten to read ''This policy and all other policies reinsured by the USDA shall be void in the event you have concealed the fact that you are ineligible to receive benefits under the Act, or if you are in fact ineligible (or action is pending which would make you ineligible), even if you are not aware of it at the time this policy is written. This policy may also be voidable, in our sole discretion, if you or anyone assisting you has intentionally concealed or misrepresented any material fact relating to this or any other policy reinsured by USDA.'' The commenters state that the Standard Reinsurance Agreement voids any policy with ineligible persons from the time of ineligibility. Concealment makes no difference. It is unfair to hold the companies to liability under a policy when FCIC controls eligibility determinations and will not stand behind the companies. The commenters also state that the last sentence should read ''voidable'' and not ''void,'' since, in most cases, a company cannot be placed at risk in determining whether someone should be banned from what remains an entitlement program. Furthermore, in many instances, it is better to let the company simply reduce the amount of the indemnity. Lastly, the commenter suggested that a sanction short of voiding the policy would be better than declaring someone ineligible. One example might be to require repayment of any overpayment to the reinsured company by the policy termination date with interest and, if not repaid, to allow the company to cancel the policy. Legal counsel for a reinsured company stated that FCIC

must understand that no reinsured company may void a policy for fraud or misrepresentation as provided in section 27 since no reinsured company can provide the due process that is a requisite for such a finding. Further, no reinsured company is imbued with the constitutional or statutory authority to bar a participant from an entitlement program. The commenter also states that a reinsured company cannot be held responsible for collection of indemnities that should not have been paid in a prior year for policies that are retroactively voided, particularly if the current reinsured company was not the insurer in the year for which the policy was voided. The commenter stated that the proposed language creates no duty to the FCIC to engage in such an effort and, vis-a-vis the insured, does not supplant the government's role and responsibility.

*Response:* Reinsured companies cannot bar a participant from the crop insurance program. The section will be revised to specify that fraud or misrepresentation may subject the insured to sanctions authorized in 7 CFR part 400, subpart R. However, when violations such as concealment, misrepresentation or fraud are found after the appropriate due process, it is the reinsured company that must deny insurance or void a policy for an ineligible person because FCIC lacks privity with the insured. The reinsured company that insured the policy for the year an indemnity should not have been paid will be responsible for collecting the overpayment. Since whenever the insured receives an overpayment it must be repaid, to only require this in the cases of fraud would not protect the program from such conduct in the future. Further, cancellation of the policy would only have a prospective effect and allow insureds to benefit from their misconduct. FCIC must protect the integrity of the program.

*Comment:* An insurance service organization recommended that the provisions of section 27(b) be amended to allow the reinsured company to retain 40 percent of the premium. The commenter stated that reinsured companies should not have to incur costs if the insured commits fraud or misrepresents a material fact.

*Response:* Since the majority of the costs associated with determinations of ineligibility will be borne by FCIC, the percentage in this section should remain 20 percent. No change has been made.

*Comment:* An insurance service organization questioned whether the sentence ''We will not be liable for any more than the liability determined in accordance with your policy that existed before the transfer occurred'' in section 28 is necessary, since it is stated in procedure. The commenter also questioned the process that will be used to determine that the transferee is eligible, as is required by the sentence that reads ''The transferee must be eligible for crop insurance.''

*Response:* These provisions must be included in the insurance contract since this is a limitation imposed on the insureds and the procedures are not provided to insureds. The same process used to determine eligibility of the person originally insured will be used to determine eligibility of any transferee. No change has been made.

*Comment:* An insurance service organization questioned the language in section 29 regarding an assignee's ability to file a claim 15 days after the 60 day period for filing a claim has expired and no action will lie against the reinsured company if it does not honor the terms of the assignment. They questioned whether the assignees will understand their right to file a claim, but even if it is filed within the 15 days specified, the company is not required to accept that claim. The commenter suggested that this language be included on the assignment form rather than in the policy provisions. The commenter suggested that the insured should file a claim within 15 days instead of 60. If 60 days are allowed, reinsured companies will be paying for losses that should have been discovered long before, instead of when they are updating the producer's APH for the next year.

*Response:* A form cannot change the terms of the policy. This provision is intended to protect an assignee in cases where insureds may not have timely notified them that a loss has occurred. This provision is clear that the assignee has the right to file a claim. The provision will be revised to clarify that reinsured companies cannot reject the claim unless it is impossible to accurately determine the amount of the claim. Since claims often are not completed within 15 days after the end of the insurance period (*e.g.,* 15 days after harvest, which ends the insurance period), it is not practical to require an insured to submit a claim within 15 days of that time.

*Comment:* Comments were received regarding section 34. A reinsured company stated that all references to FSA or FSA farm serial numbers should be removed. The commenter suggested using a minimum distance to provide for unit separation. The commenter stated that there is no reason to rely on FSA information because it is difficult and expensive to obtain, often is not current, and has an uncertain future. The commenter recommended that a crop enterprise unit be offered as an option to the insured (all acreage of a crop insured as one unit). This would be likely to improve the program's underwriting results and reduce the number and frequency of losses and, therefore, could be offered to producers at an attractive premium price. An insurance service organization stated that section 34(a) must include reference to the possibility of unit division by written agreement, such as is in the Coarse Grains Crop Provisions (''if, for each optional unit, you meet all the conditions of this section or if a written agreement to such division exists.'').

*Response:* FSA farm serial numbers continue to be used as a basis of unit division in certain instances. Therefore, reference to FSA or FSA farm serial numbers should not be removed. Designated distances may be considered as a method of unit division in the future, but appropriate research must be done and procedures developed. Some programs of insurance currently offer enterprise units. As experience with such programs becomes available, FCIC may consider expansion of use of the enterprise unit structure. The reference to written agreements is included in section 34(b). It is not included in section 34(a) since a written agreement should not over-ride those provisions.

*Comment:* A reinsured company stated that the phrase ''independently verified'' in section 34(a)(3) should be defined or deleted.

*Response:* FCIC has clarified this provision by indicating that the records must be acceptable to the reinsured company.

*Comment:* Comments were received regarding § 457.9. An insurance service organization questioned why this section was removed from the policy. Legal counsel for a reinsured company recommended that this section be made a part of the policy.

*Response:* No changes to § 457.9 were proposed in this rule as it is not specifically a part of the policy. FCIC does not believe that it is necessary to include this contingency in the policy. In the event that Congress does not appropriate funds, producers will be notified of cancellation in accordance with the provisions of section 2 of the Basic Provisions.

*Comment:* A reinsured company questioned if production from acreage planted after the final planting date (winter wheat counties only), or after the late planting period in other counties, will be counted against the production guarantee if prevented planting is applicable.

*Response:* Acreage planted under these circumstances will be considered late planted under these provisions, and the production guarantee for it will be combined with the guarantees for acreage that is timely planted and planted within the late planting period. All production from the planted acres will then count against the combined guarantees.

*Comment:* A reinsured company questioned the definition of ''planted acreage'' in the Small Grains Crop Provisions and asked if the production from acreage on which seed was broadcasted but not incorporated will be counted against the production guarantee, especially if prevented planting eligibility exists and the seed is broadcasted after the late planting period.

*Response:* A provision has been incorporated into section 16(b) of the Basic Provisions to address this concern.

*Comment:* A reinsured company recommended providing optional units for durum wheat in counties with only a spring final planting date.

*Response:* The suggested change would be substantive and not subject to this rulemaking. FCIC will consider such a change in the future.

*Comment:* A reinsured company suggested adding the phrase ''A replant payment may be made in accordance with section 9'' to section 7(a)(1)(ii) of the Small Grains Crop Provisions.

*Response:* Section 7 of the Small Grains Crop Provisions contains provisions relative to insurability of acreage. This section is not intended to authorize a replant payment. Since section 9 of the Small Grains Crop Provisions specifies the conditions under which replanting payments are available, it is not necessary to duplicate the provisions of section 9 in section 7. No change has been made.

*Comment:* An insurance service organization recommended that the Small Grains Crop Provisions be amended to allow the tenant to receive 100 percent of the replanting costs as the Coarse Grains Crop Provisions do.

*Response:* FCIC has reevaluated this provision due to comments received on other regulations and determined that the provision is not equitable to all insureds. Specifically, if a landlord and tenant are insured with different companies, the provisions do not apply. Crop Provisions containing these terms will be amended to eliminate them. No change has been made.

*Comment:* A reinsured company questioned if cotton and ELS cotton coverage should continue to be extended while modules are left in the field. They suggested that this coverage could possibly be offered as an option for additional premium.

*Response:* Loss adjusters, in most situations, cannot distinguish damage that occurred in the field from that occurring in the module. In addition, the weight of lint cotton, its grade, and quality adjustment are not determined until the cotton is ginned. Producers might be encouraged to delay harvest to maintain coverage if cotton in modules is not covered. Cotton in a module is less susceptible to weather damage than cotton in the field. No change has been made.

*Comment:* A regional and a national commodity group stated that there are serious inequities in insurance coverage among crops, such as the lack of replanting coverage for cotton and the 25 percent deductible for cotton quality losses. Replanting provisions should be a basic component of every cotton crop insurance policy. The commenter stated that, from an agronomic perspective, cotton producers have replanting experiences that are comparable to those of other crops. Cottonseed now has better vigor, is pre-treated two or three ways, and is adapted for different growing regions and climatic conditions.

The national commodity group stated that they have been unable to find any documentation of the rationale and date of imposition of the 25 percent deductible. The inequity between a corn or wheat producer and a cotton producer exists for no apparent economic or policy reason.

*Response:* FCIC is reviewing replanting coverage for cotton and the quality provisions. Any proposed changes will be published in the **Federal Register** as changes to the Cotton Crop Provisions and will be made available for public comment. No change will be made at this time.

*Comment:* Comments were received regarding the premium rates for cotton. A national commodity group stated that the structure for cotton needs to be revised to account for adoption of new production technology such as Bt cotton seed, Boll Weevil Eradification, irrigation, and other advances. The commenter stated that the risks associated with growing cotton have decreased and so should premiums if new cotton customers are expected. A regional commodity group stated that they are aware that funding shortfalls do exist and they suggested that all possible alternatives be exhausted before a decision to increase premium levels is made. They state that increasing premiums would help alleviate the funding problem short-term. However, such an action would move FCIC away from what should be its ultimate goal of increasing the relative value of FCIC products and increasing producer participation in the program. For many cotton producers, crop insurance simply costs too much in relation to the level of insurance protection it provides.

*Response:* Premium rates on all crops are based in part on the loss history of the crop. Crop improvements and practices that result in reduced losses are also considered. All rates are reviewed prior to the actuarial filing dates and are changed as deemed appropriate.

*Comment:* A reinsured company questioned whether the wording in section 2 of the Sugar Beet Crop Provisions requires optional units to be established by processor contract. If so, the commenter is strongly opposed. The commenter stated that this issue has been addressed at an earlier date with regard to the Processing Tomato Crop Provisions, and the supporting reasons are similar for sugar beets.

*Response:* Section 2 of the Sugar Beet Crop Provisions does not require optional units by processor contract. Section 2 simply states that a producer is not eligible for optional units unless the producer has a processor contract that contracts for production from a specified number of acres. Once eligible, optional units for sugar beets may be established only by section, section equivalent or FSA farm serial number; or by irrigated and non-irrigated acreage.

*Comment:* An insurance service organization recommended changing the Sugar Beet Crop Provisions to read ''a contract must be on file.'' The commenter also recommended a change to state that the acres stated in the contract do not limit the acres the producer can insure. It is a common practice to overplant acres and the sugar processors do accept all acres planted. The commenter suggested that the following sentence be added ''We will not cover any loss from the inability of the sugar factory to accept production from overage acres.'' In this situation, contract acres would be used. The commenter also suggested eliminating contracts altogether.

*Response:* Provisions that would be impacted by the comment were not published in the proposed rule and made available for public comment. No changes can be made at this time. FCIC will consider this proposal when the crop provision is reviewed.

*Comment:* A reinsured company suggested adding the phrase ''A replant payment may be made in accordance

with section 9'' to section 6 of the Coarse Grains Crop Provisions.

*Response:* Section 6 of the Coarse Grains Crop Provisions proposed rule contains provisions relative to insurability of acreage. This section is not intended to authorize a replant payment. Since section 9 of the Coarse Grains Crop Provisions specifies that replanting payments are available, it is not necessary to duplicate that provision in section 6. No change has been made.

*Comment:* A reinsured company questioned whether the language in section 9(a) of the Coarse Grains Crop Provisions provides a replanting payment to both a landlord and tenant having different coverage levels. If the replanting is required for one, both should be entitled to a replanting payment, providing they both incur replanting expense.

*Response:* There is nothing in section 9(a) of the Coarse Grains Crop Provisions that precludes a landlord and tenant having different coverage levels from being eligible for a replanting payment. The tenant and landlord may each be eligible as long as they both incur replanting expense; the crop is damaged by an insurable cause of loss to the extent that the remaining stand will not produce at least 90 percent of the respective production guarantees for the acreage; and it is practical to replant. If a tenant or landlord elects higher coverage, greater benefits are paid. However, it is possible under these provisions for one person sharing in the crop to be eligible for a replanting payment while the other person may be ineligible for such a payment. For example, assume the acreage had an APH yield of 80 bushels per acre. If the landlord had a 75 percent coverage level with a production guarantee of 60 bushels per acre (80 × .75), the landlord would be eligible for a replanting payment if the remaining stand was appraised at less than 54 bushels per acre (60 × .90). If the tenant had a 50 percent coverage level with a production guarantee of 40 bushels per acre (80 × .50), the tenant would be entitled to a replanting payment if the remaining stand was appraised at less than 36 bushels per acre (40 × .90). In this example, if the remaining stand appraised at 40 bushels per acre, the landlord would be eligible for a replant payment but not the tenant.

*Comment:* Some reinsured companies questioned the elimination of optional units from the Forage Production Crop Provisions and whether the year of implementation is 1999 or 1998.

*Response:* Optional units are currently not available for forage production. Since the optional unit provisions are being added to the Basic Provisions, those provisions must be made ineffective to maintain the current forage production unit structure. These provisions are not effective until the 1999 crop year since the contract change date for 1998 has passed.

*Comment:* A reinsured company questioned whether further changes would be made to the Raisin Crop Provisions for the 1998 crop year.

*Response:* FCIC does not plan further changes to the Raisin Crop Provisions for the 1998 crop year.

*Comment:* An insurance service organization suggested allowing units for storage and non-storage onions only, and not allow additional units by type. Additional units by type will expose insurers to unnecessary liability and increase premiums.

*Response:* Under the previous Onion Endorsement, units were allowed by type, *i.e.*, red, yellow, or white onions, in lieu of the traditional units by section or farm serial number. This unit division structure has worked well for onions and is consistent with onion production practices. No change has been made.

*Comment:* A reinsured company stated that both irrigated and non-irrigated grape vineyards exist in California, and that optional units by these practices should be available. This situation also exists for walnuts and possibly other perennial crops.

*Response:* Irrigated and non-irrigated practices do exist for several perennial crops in California. However, since both practices rarely exist on the same farm, little or no benefit would be derived by allowing separate optional units for these practices. No changes have been made.

*Comment:* A reinsured company suggested adding the phrase ''an adequate rate of seed for the acreage to produce an acceptable stand'' to the definition of planted acreage in the Forage Seeding Crop Provisions. Another reinsured company questioned if the implementation year should be 1998 instead of 1999.

*Response:* FCIC has revised the provisions to clarify that an adequate amount of seed must be planted. The provisions will not be made effective until the 1999 crop year.

*Comment:* A reinsured company questioned whether changes were necessary for the proposed rules for hybrid seed corn, green peas and sweet corn provisions that have not been finalized.

*Response:* Those Crop Provisions, such as table grapes, prunes, etc., that were finalized after publication of the proposed rule will be incorporated into this final rule. Since there were no substantive changes since the publication of those Crop Provisions, additional comments are not necessary.

In addition to the changes described above and minor editorial changes, FCIC has made the following changes to the Basic Provisions and the Crop Provisions.

1. Section 1—Amended the definition of ''abandon'' for clarification. Added a definition for ''approved yield'' so this definition can be deleted from the Crop Provisions. Clarified the definition of ''application'' to indicate that insurance will not be available to a producer who is ineligible under any Federal regulation. Amended the definition of ''replanting'' to indicate that seed must be replaced with the expectation of producing at least the yield used to determine the production guarantee. Also, added a definition for the term ''substantial beneficial interest'' for clarification.

2. Section 3(d)(2)—Clarified the provision to indicate that the production guarantee may be revised if the producer fails to accurately report acreage or other material information.

3. Sections 6(a)(1) and (2)—Deleted the references to ''fall'' and ''spring.'' These terms are not necessary since actual dates are specified.

4. Section 6(g)(1)—Amended the provisions to specify that if the information reported by the insured results in a lower liability than the actual liability the insurance provider determines, the production guarantee or the amount of insurance on the unit will be reduced to an amount that is consistent with the reported information.

5. Section 6(g)(2)—Amended the provisions to specify that if the information reported by the insured results in a higher liability than the actual liability the insurance provider determines, the information contained in the acreage report will be revised to be consistent with the correct information.

6. Section 8(a)—Amended the provisions to specify that the insured crop may also be specified in the Special Provisions.

7. Section 9(c)—Clarified that these provisions are applicable regardless of the provisions in section 8(b)(1), which specify that no insurance will be provided unless a premium rate is provided for the specific practice.

8. Sections 10(c) and (d)—Reorganized and clarified the provisions so that share arrangements and cash arrangements are contained in separate sections.

9. Section 13(b)(2)—Clarified that a replanting payment will not be made for acreage planted prior to the earliest planting date established by the Special Provisions.

10. Section 14(a) (Our Duties)—Amended the provisions to indicate that the reinsured company will pay a loss within 30 days after completion of arbitration or appeal proceedings.

11. Section 17(a) was amended by replacing ''crop provisions'' with ''policy provisions.'' This change allows both the crop provisions and the Special Provisions to limit prevented planting coverage.

12. Clarified section 17(b) to indicate that additional levels of prevented planting coverage are not available for Catastrophic Risk Protection coverage. Also revised this section to indicate that elected or assigned prevented planting coverage levels may not be increased if a cause of loss that will or could prevent planting is evident prior to the time the producer wishes to change the prevented planting coverage level.

13. Changed the title of section 21 to indicate that provisions regarding access to records are included in the section.

14. Amended the introductory text for the Cotton Crop Provisions and the Extra Long Staple Cotton Crop Provisions to make the provisions effective for the 1998 crop year only.

15. Added the definition of ''sales closing date'' in the Small Grains Crop Provisions and the Forage Seeding Crop Provisions for clarification.

16. Amended the definition of ''planted acreage'' in the Fresh Market Sweet Corn, Fresh Market Tomato (dollar plan), and the Fresh Market Pepper Crop Provisions to include a reference to separate planting periods.

17. Changed the effective dates of the Safflower Crop Provisions and the Onion Crop Provisions to the 1998 and succeeding crop years for counties with a December 31 contract change date.

18. Incorporated sections 457.133 (Prune Crop Insurance Provisions); § 457.137 (Green Pea Crop Insurance Provisions); § 457.149 (Table Grape Crop Insurance Provisions); § 457.155 (Processing Bean Crop Insurance Provisions); and § 457.160 (Processing Tomato Crop Insurance Provisions) since these Crop Provisions were finalized after this rule was proposed as follows:

(a) Deleted definitions that are added to the Basic Provisions by this rule. This allows FCIC to remove duplication of provisions from the Crop Provisions.

(b) Modified section 2 because the requirements for optional units have now been incorporated into section 34 of the Basic Provisions.

(c) Deleted, modified, or added late and prevented planting provisions since these provisions are now included in sections 16 and 17 of the Basic Provisions.

(d) Deleted the written agreement provisions because they are now incorporated into section 18 of the Basic Provisions.

Good cause is shown to make this rule effective upon filing for public inspection at the Office of the Federal Register. This rule provides prevented planting coverage when applicable, for all crops under the Basic Provisions. This rule must be effective prior to the contract change dates of the crops for which these revised prevented planting provisions are effective. Therefore, public interest requires the agency to act immediately to make these provisions available for as many crops as possible for the 1998 crop year.

**List of Subjects in 7 CFR Part 457**

Almond; Arizona-California citrus; Coarse grains; Cotton; Cranberry; Dry bean; Extra long staple cotton; Fig; Florida citrus fruit; Forage production; Forage seeding; Fresh market pepper; Fresh market sweet corn; Fresh market tomato (Dollar plan); Fresh market tomato (Guaranteed production plan); Grape; Green pea; Macadamia Nut; Macadamia Tree; Nursery; Onion; Peach; Pear; Plum; Processing bean; Processing tomato; Prune; Raisin; Rice; Safflower; Small grains; Sugar beet; Sugarcane; Sunflower seed; Table grape; Texas citrus tree; Texas citrus fruit; and Walnut.

**Final Rule**

Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation hereby amends 7 CFR part 457 as follows:

## PART 457—COMMON CROP INSURANCE REGULATIONS; REGULATIONS FOR THE 1998 AND SUBSEQUENT CONTRACT YEARS

1. The authority citation for 7 CFR part 457 continues to read as follows:

**Authority:** 7 U.S.C. 1506(l), 1506(p).

2. Section 457.2 is amended by removing paragraph (e), redesignating paragraphs (f), (g), and (h) as paragraphs (e), (f), and (g) respectively and revising paragraphs (b), (c), and (d) to read as follows:

**§ 457.2 Availability of federal crop insurance.**

* * * * *

(b) The insurance is offered through companies reinsured by the Federal Crop Insurance Corporation (FCIC) that offer contracts containing the same terms and conditions as the contract set out in this part. These contracts are clearly identified as being reinsured by FCIC. FCIC may offer the contract for the catastrophic level of coverage contained in this part and part 402 directly to the insured through local offices of the Department of Agriculture only if the Secretary determines that the availability of local agents is not adequate. Those contracts are specifically identified as being offered by FCIC.

(c) Except as specified in the Crop Provisions, the Catastrophic Risk Protection Endorsement (part 402 of this chapter) and part 400, subpart T of this chapter, no person may have in force more than one contract on the same crop for the same crop year in the same county.

(d) Except as specified in paragraph (c) of this section, if a person has more than one contract under the Act that provides coverage for the same loss on the same crop for the same crop year in the same county, all such contracts shall be voided for that crop year and the person will be liable for the premium on all contracts, unless the person can show to the satisfaction of the Corporation that the multiple contracts of insurance were inadvertent and without the fault of the person. If the multiple contracts of insurance are shown to be inadvertent and without the fault of the person, the contract with the earliest signature date on the application will be valid and all other contracts on that crop in the county for that crop year will be canceled. No liability for indemnity or premium will attach to the contracts so canceled.

* * * * *

3. Revise § 457.4 to read as follows:

**§ 457.4 OMB control numbers.**

The information collection requirements contained in these regulations have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. chapter 35 and have been assigned OMB number 0563–0053.

4. Section 457.8 paragraph (b) is revised to read as follows:

**§ 457.8 The application and policy.**

(a) * * *

(b) FCIC or the reinsured company may reject or discontinue the acceptance of applications in any county or of any individual application upon FCIC's determination that the insurance risk is excessive.

* * * * *

5. Section 457.8 is amended by revising the policy to read as follows:

**DEPARTMENT OF AGRICULTURE**

**FEDERAL CROP INSURANCE CORPORATION**

**[OR POLICY ISSUING COMPANY NAME]**

*Common Crop Insurance Policy*

(This is a continuous policy. Refer to section 2.)

FCIC policies

This is an insurance policy issued by the Federal Crop Insurance Corporation (FCIC), a United States government agency. The provisions of the policy are published in the **Federal Register** and in chapter IV of title 7 of the Code of Federal Regulations (CFR) under the Federal Register Act (44 U.S.C. 1501 *et seq.*), and may not be waived or varied in any way by the crop insurance agent or any other agent or employee of FCIC.

Throughout this policy, ''you'' and ''your'' refer to the named insured shown on the accepted application and ''we,'' ''us,'' and ''our'' refer to the Federal Crop Insurance Corporation. Unless the context indicates otherwise, use of the plural form of a word includes the singular and use of the singular form of the word includes the plural.

Reinsured Policies

This insurance policy is reinsured by the Federal Crop Insurance Corporation (FCIC) under the provisions of the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*) (Act). All provisions of the policy and rights and responsibilities of the parties are specifically subject to the Act. The provisions of the policy are published in the **Federal Register** and codified in chapter IV of title 7 of the Code of Federal Regulations (CFR) under the Federal Register Act (44 U.S.C. 1501 *et seq.*), and may not be waived or varied in any way by the crop insurance agent or any other agent or employee of FCIC or the company. In the event we cannot pay your loss, your claim will be settled in accordance with the provisions of this policy and paid by FCIC. No state guarantee fund will be liable for your loss.

Throughout this policy, ''you'' and ''your'' refer to the named insured shown on the accepted application and ''we,'' ''us,'' and ''our'' refer to the insurance company providing insurance. Unless the context indicates otherwise, use of the plural form of a word includes the singular and use of the singular form of the word includes the plural.

*Agreement to insure.* In return for the payment of the premium, and subject to all of the provisions of this policy, we agree with you to provide the insurance as stated in this policy. If a conflict exists among the policy provisions, the order of priority is as follows: (1) the Catastrophic Risk Protection Endorsement, as applicable; (2) the Special Provisions; (3) the Crop Provisions; and (4) these Basic Provisions (§ 457.8), with (1) controlling (2), etc.

**TERMS AND CONDITIONS**

*Basic Provisions*

1. Definitions

*Abandon.* Failure to continue to care for the crop, providing care so insignificant as to provide no benefit to the crop, or failure to harvest in a timely manner, unless an insured cause of loss prevents you from properly caring for or harvesting the crop or causes damage to it to the extent that most producers of the crop on acreage with similar characteristics in the area would not normally further care for or harvest it.

*Acreage report.* A report required by paragraph 6 of these Basic Provisions that contains, in addition to other required information, your report of your share of all acreage of an insured crop in the county, whether insurable or not insurable.

*Acreage reporting date.* The date contained in the Special Provisions or as provided in section 6 by which you are required to submit your acreage report.

*Act.* The Federal Crop Insurance Act (7 U.S.C. 1501 *et seq.*).

*Actuarial documents.* The material for the crop year which is available for public inspection in your agent's office, and which shows the amounts of insurance or production guarantees, coverage levels, premium rates, practices, insurable acreage, and other related information regarding crop insurance in the county.

*Agricultural commodity.* All insurable crops and other fruit, vegetable or nut crops produced for human or animal consumption.

*Another use, notice of.* The written notice required when you wish to put acreage to another use (see section 14).

*Application.* The form required to be completed by you and accepted by us before insurance coverage will commence. This form must be completed and filed in your agent's office not later than the sales closing date of the initial insurance year for each crop for which insurance coverage is requested. If cancellation or termination of insurance coverage occurs for any reason, including but not limited to indebtedness, suspension, debarment, disqualification, cancellation by you or us or violation of the controlled substance provisions of the Food Security Act of 1985, a new application must be filed for the crop. Insurance coverage will not be provided if you are ineligible under the contract or under any Federal statute or regulation.

*Approved yield.* The yield determined in accordance with 7 CFR part 400, subpart (G).

*Assignment of indemnity.* A transfer of policy rights, made on our form, and effective when approved by us. It is the arrangement whereby you assign your right to an indemnity payment to any party of your choice for the crop year.

*Basic unit.* All insurable acreage of the insured crop in the county on the date coverage begins for the crop year:

(1) In which you have 100 percent crop share; or

(2) Which is owned by one person and operated by another person on a share basis. (Example: If, in addition to the land you own, you rent land from five landlords, three on a crop share basis and two on a cash basis, you would be entitled to four units; one for each crop share lease and one that combines the two cash leases and the land you own.) Land which would otherwise be one unit may, in certain instances, be divided according to guidelines contained in section 34 of these Basic Provisions and in the applicable Crop Provisions.

*Cancellation date.* The calendar date specified in the Crop Provisions on which coverage for the crop will automatically renew unless canceled in writing by either you or us or terminated in accordance with the policy terms.

*Claim for indemnity.* A claim made on our form by you for damage or loss to an insured crop and submitted to us not later than 60 days after the end of the insurance period (see section 14).

*Consent.* Approval in writing by us allowing you to take a specific action.

*Contract.* (See ''policy'').

*Contract change date.* The calendar date by which we make any policy changes available for inspection in the agent's office (see section 4).

*County.* Any county, parish, or other political subdivision of a state shown on your accepted application, including acreage in a field that extends into an adjoining county if the county boundary is not readily discernible.

*Coverage.* The insurance provided by this policy, against insured loss of production or value, by unit as shown on your summary of coverage.

*Coverage begins, date.* The calendar date insurance begins on the insured crop, as contained in the Crop Provisions, or the date planting begins on the unit (see section 11 of these Basic Provisions for specific provisions relating to prevented planting).

*Crop Provisions.* The part of the policy that contains the specific provisions of insurance for each insured crop.

*Crop year.* The period within which the insured crop is normally grown and designated by the calendar year in which the insured crop is normally harvested.

*Damage.* Injury, deterioration, or loss of production of the insured crop due to insured or uninsured causes.

*Damage, notice of.* A written notice required to be filed in your agent's office whenever you initially discover the insured crop has been damaged to the extent that a loss is probable (see section 14).

*Days.* Calendar days.

*Deductible.* The amount determined by subtracting the coverage level percentage you choose from 100 percent. For example, if you elected a 65 percent coverage level, your deductible would be 35 percent (100% − 65% = 35%).

*Delinquent account.* Any account you have with us in which premiums and interest on those premiums is not paid by the termination date specified in the Crop Provisions, or any other amounts due us, such as indemnities found not to have been earned, which are not paid within 30 days of our mailing or other delivery of notification to you of the amount due.

*Earliest planting date.* The earliest date established for planting the insured crop (see Special Provisions and section 13).

*End of insurance period, date of.* The date upon which your crop insurance coverage ceases for the crop year (see Crop Provisions and section 11).

*Field.* All acreage of tillable land within a natural or artificial boundary (*e.g.*, roads, waterways, fences, etc.).

*Final planting date.* The date contained in the Special Provisions for the insured crop by

which the crop must initially be planted in order to be insured for the full production guarantee or amount of insurance per acre.

*FSA.* The Farm Service Agency, an agency of the USDA, or a successor agency.

*FSA farm serial number.* The number assigned to the farm by the local FSA office.

*Good farming practices.* The cultural practices generally in use in the county for the crop to make normal progress toward maturity and produce at least the yield used to determine the production guarantee or amount of insurance, and are those recognized by the Cooperative State Research, Education, and Extension Service as compatible with agronomic and weather conditions in the county.

*Insured.* The named person as shown on the application accepted by us. This term does not extend to any other person having a share or interest in the crop (for example, a partnership, landlord, or any other person) unless specifically indicated on the accepted application.

*Insured crop.* The crop for which coverage is available under these Basic Provisions and the applicable Crop Provisions as shown on the application accepted by us.

*Interplanted.* Acreage on which two or more crops are planted in a manner that does not permit separate agronomic maintenance or harvest of the insured crop.

*Irrigated practice.* A method of producing a crop by which water is artificially applied during the growing season by appropriate systems and at the proper times, with the intention of providing the quantity of water needed to produce at least the yield used to establish the irrigated production guarantee or amount of insurance on the irrigated acreage planted to the insured crop.

*Late planted.* Acreage initially planted to the insured crop after the final planting date.

*Late planting period.* The period that begins the day after the final planting date for the insured crop and ends 25 days after the final planting date, unless otherwise specified in the Crop Provisions or Special Provisions.

*Loss, notice of.* The notice required to be given by you not later than 72 hours after certain occurrences or 15 days after the end of the insurance period, whichever is earlier (see section 14).

*Negligence.* The failure to use such care as a reasonably prudent and careful person would use under similar circumstances.

*Non-contiguous.* Any two or more tracts of land whose boundaries do not touch at any point, except that land separated only by a public or private right-of-way, waterway, or an irrigation canal will be considered as contiguous.

*Palmer Drought Severity Index.* A meteorological index calculated by the National Weather Service to indicate prolonged and abnormal moisture deficiency or excess.

*Person.* An individual, partnership, association, corporation, estate, trust, or other legal entity, and wherever applicable, a State or a political subdivision or agency of a State. ''Person'' does not include the United States Government or any agency thereof.

*Planted acreage.* Land in which seed, plants, or trees have been placed, appropriate for the insured crop and planting method, at the correct depth, into a seedbed that has been properly prepared for the planting method and production practice.

*Policy.* The agreement between you and us consisting of the accepted application, these Basic Provisions, the Crop Provisions, the Special Provisions, other applicable endorsements or options, the actuarial documents for the insured crop, the Catastrophic Risk Protection Endorsement, if applicable, and the applicable regulations published in 7 CFR chapter IV.

*Practical to replant.* Our determination, after loss or damage to the insured crop, based on all factors, including, but not limited to moisture availability, marketing window, condition of the field, and time to crop maturity, that replanting the insured crop will allow the crop to attain maturity prior to the calendar date for the end of the insurance period. It will not be considered practical to replant after the end of the late planting period, or the final planting date if no late planting period is applicable, unless replanting is generally occurring in the area. Unavailability of seed or plants will not be considered a valid reason for failure to replant.

*Premium billing date.* The earliest date upon which you will be billed for insurance coverage based on your acreage report. The premium billing date is contained in the Special Provisions.

*Prevented planting.* Failure to plant the insured crop with proper equipment by the final planting date designated in the Special Provisions for the insured crop in the county or by the end of the late planting period. You must have been prevented from planting the insured crop due to an insured cause of loss that also prevented most producers from planting on acreage with similar characteristics in the surrounding area.

*Price election.* The amounts contained in the Special Provisions or an addendum thereto, to be used for computing the value per pound, bushel, ton, carton, or other applicable unit of measure for the purposes of determining premium and indemnity under the policy.

*Production guarantee (per acre).* The number of pounds, bushels, tons, cartons, or other applicable units of measure determined by multiplying the approved yield per acre by the coverage level percentage you elect.

*Production report.* A written record showing your annual production and used by us to determine your yield for insurance purposes (see section 3). The report contains yield information for previous years, including planted acreage and harvested production. This report must be supported by written verifiable records from a warehouseman or buyer of the insured crop or by measurement of farm-stored production, or by other records of production approved by us on an individual case basis.

*Replanting.* Performing the cultural practices necessary to prepare the land to replace the seed or plants of the damaged or destroyed insured crop and then replacing the seed or plants of the same crop in the insured acreage with the expectation of producing at least the yield used to determine the production guarantee.

*Representative sample.* Portions of the insured crop that must remain in the field for examination and review by our loss adjuster when making a crop appraisal, as specified in the Crop Provisions. In certain instances we may allow you to harvest the crop and require only that samples of the crop residue be left in the field.

*Sales closing date.* A date contained in the Special Provisions by which an application must be filed. The last date by which you may change your crop insurance coverage for a crop year.

*Section.* (for the purposes of unit structure) A unit of measure under a rectangular survey system describing a tract of land usually one mile square and usually containing approximately 640 acres.

*Share.* Your percentage of interest in the insured crop as an owner, operator, or tenant at the time insurance attaches. However, only for the purpose of determining the amount of indemnity, your share will not exceed your share at the earlier of the time of loss or the beginning of harvest.

*Special Provisions.* The part of the policy that contains specific provisions of insurance for each insured crop that may vary by geographic area.

*State.* The state shown on your accepted application.

*Substantial beneficial interest.* An interest held by any person of at least 10 percent in the applicant or insured.

*Summary of coverage.* Our statement to you, based upon your acreage report, specifying the insured crop and the guarantee or amount of insurance coverage provided by unit.

*Tenant.* A person who rents land from another person for a share of the crop or a share of the proceeds of the crop (see the definition of ''share'' above).

*Termination date.* The calendar date contained in the Crop Provisions upon which your insurance ceases to be in effect because of nonpayment of any amount due us under the policy, including premium.

*Timely planted.* Planted on or before the final planting date designated in the Special Provisions for the insured crop in the county.

*USDA.* United States Department of Agriculture.

*Void.* When the policy is considered not to have existed for a crop year as a result of concealment, fraud or misrepresentation (see section 27).

*Written agreement.* A document that alters designated terms of a policy as authorized under these Basic Provisions, the Crop Provisions, or the Special Provisions for the insured crop (see section 18).

2. Life of Policy, Cancellation, and Termination

(a) This is a continuous policy and will remain in effect for each crop year following the acceptance of the original application until canceled by you in accordance with the terms of the policy or terminated by operation of the terms of the policy or by us.

(b) Your application for insurance must contain all the information required by us to insure the crop. Applications that do not contain all social security numbers and employer identification numbers, as applicable, (except as stated herein) coverage

level, price election, crop, type, variety, or class, plan of insurance, and any other material information required to insure the crop, are not acceptable. If a person with a substantial beneficial interest in the insured crop refuses to provide a social security number or employer identification number and that person is:

(1) Not on the non-standard classification system list, the amount of coverage available under the policy will be reduced proportionately by that person's share of the crop; or

(2) On the non-standard classification system list, the insurance will not be available to that person and any entity in which the person has a substantial beneficial interest.

(c) After acceptance of the application, you may not cancel this policy for the initial crop year. Thereafter, the policy will continue in force for each succeeding crop year unless canceled or terminated as provided below.

(d) Either you or we may cancel this policy after the initial crop year by providing written notice to the other on or before the cancellation date shown in the Crop Provisions.

(e) If any amount due, including premium, is not paid on or before the termination date for the crop on which an amount is due:

(1) For a policy with the unpaid premium, the policy will terminate effective on the termination date immediately subsequent to the billing date for the crop year;

(2) For a policy with other amounts due, the policy will terminate effective on the termination date immediately after the account becomes delinquent;

(3) Ineligibility will be effective as of the date that the policy was terminated for the crop for which you failed to pay an amount owed and for all other insured crops with coincidental termination dates;

(4) All other policies that are issued by us under the authority of the Act will also terminate as of the next termination date contained in the applicable policy;

(5) If you are ineligible, you may not obtain any crop insurance under the Act until payment is made, you execute an agreement to repay the debt and make the payments in accordance with the agreement, or you file a petition to have your debts discharged in bankruptcy;

(6) If you execute an agreement to repay the debt and fail to timely make any scheduled payment, you will be ineligible for crop insurance effective on the date the payment was due until the debt is paid in full or you file a petition to discharge the debt in bankruptcy and subsequently obtain discharge of the amounts due. Dismissal of the bankruptcy petition before discharge will void all policies in effect retroactive to the date you were originally determined ineligible to participate;

(7) Once the policy is terminated, the policy cannot be reinstated for the current crop year unless the termination was in error;

(8) After you again become eligible for crop insurance, if you want to obtain coverage for your crops, you must reapply on or before the sales closing date for the crop (Since applications for crop insurance cannot be accepted after the sales closing date, if you make any payment after the sales closing date, you cannot apply for insurance until the next crop year); and

(9) If we deduct the amount due us from an indemnity, the date of payment for the purpose of this section will be the date you sign the properly executed claim for indemnity.

(10) For example, if crop A, with a termination date of October 31, 1997, and crop B, with a termination date of March 15, 1998, are insured and you do not pay the premium for crop A by the termination date, you are ineligible for crop insurance as of October 31, 1997, and crop A's policy is terminated on that date. Crop B's policy is terminated as of March 15, 1998. If you enter an agreement to repay the debt on April 25, 1998, you can apply for insurance for crop A by the October 31, 1998, sales closing date and crop B by the March 15, 1999, sales closing date. If you fail to make a scheduled payment on November 1, 1998, you will be ineligible for crop insurance effective on November 1, 1998, and you will not be eligible unless the debt is paid in full or you file a petition to have the debt discharged in bankruptcy and subsequently receive discharge.

(f) If you die, disappear, or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved, the policy will terminate as of the date of death, judicial declaration, or dissolution. If such event occurs after coverage begins for any crop year, the policy will continue in force through the crop year and terminate at the end of the insurance period and any indemnity will be paid to the person or persons determined to be beneficially entitled to the indemnity. The premium will be deducted from the indemnity or collected from the estate. Death of a partner in a partnership will dissolve the partnership unless the partnership agreement provides otherwise. If two or more persons having a joint interest are insured jointly, death of one of the persons will dissolve the joint entity.

(g) We may terminate your policy if no premium is earned for 3 consecutive years.

(h) The cancellation and termination dates are contained in the Crop Provisions.

3. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities

(a) For each crop year, the production guarantee or amount of insurance, coverage level, and price at which an indemnity will be determined for each unit will be those used to calculate your summary of coverage. The information necessary to determine those factors will be contained in the Special Provisions or in the actuarial documents.

(b) You may select only one coverage level from among those offered by us for each insured crop. You may change the coverage level, price election, or amount of insurance for the following crop year by giving written notice to us not later than the sales closing date for the insured crop. Since the price election or amount of insurance may change each year, if you do not select a new price election or amount of insurance on or before the sales closing date, we will assign a price election or amount of insurance which bears the same relationship to the price election schedule as the price election or amount of insurance that was in effect for the preceding year. (For example: If you selected 100 percent of the market price for the previous crop year and you do not select a new price election for the current crop year, we will assign 100 percent of the market price for the current crop year.)

(c) You must report production to us for the previous crop year by the earlier of the acreage reporting date or 45 days after the cancellation date unless otherwise stated in the Special Provisions:

(1) If you do not provide the required production report, we will assign a yield for the previous crop year. The yield assigned by us will not be more than 75 percent of the yield used by us to determine your coverage for the previous crop year. The production report or assigned yield will be used to compute your approved yield for the purpose of determining your coverage for the current crop year.

(2) If you have filed a claim for any crop year, the documents signed by you which state the amount of production used to complete the claim for indemnity will be the production report for that year unless otherwise specified by FCIC.

(3) Production and acreage for the prior crop year must be reported for each proposed optional unit by the production reporting date. If you do not provide the information stated above, the optional units will be combined into the basic unit.

(d) We may revise your production guarantee for any unit, and revise any indemnity paid based on that production guarantee, if we find that your production report under paragraph (c) of this section:

(1) Is not supported by written verifiable records in accordance with the definition of production report; or

(2) Fails to accurately report actual production, acreage, or other material information.

(e) In addition to the price election or amount of insurance available on the contract change date, we may provide an additional price election or amount of insurance no later than 15 days prior to the sales closing date. You must select the additional price election or amount of insurance on or before the sales closing date for the insured crop. These additional price elections or amounts of insurance will not be less than those available on the contract change date. If you elect the additional price election or amount of insurance any claim settlement and amount of premium will be based on this amount.

4. Contract Changes

(a) We may change the terms of your coverage under this policy from year to year.

(b) Any changes in policy provisions, price elections, amounts of insurance, premium rates, and program dates will be provided by us to your crop insurance agent not later than the contract change date contained in the Crop Provisions, except that price elections may be offered after the contract change date in accordance with section 3. You may view the documents or request copies from your crop insurance agent.

(c) You will be notified, in writing, of changes to the Basic Provisions, Crop

Provisions, and Special Provisions not later than 30 days prior to the cancellation date for the insured crop. Acceptance of changes will be conclusively presumed in the absence of notice from you to change or cancel your insurance coverage.

5. Liberalization

If we adopt any revision that broadens the coverage under this policy subsequent to the contract change date without additional premium, the broadened coverage will apply.

6. Report of Acreage

(a) An annual acreage report must be submitted to us on our form for each insured crop in the county on or before the acreage reporting date contained in the Special Provisions, except as follows:

(1) If you insure multiple crops that have final planting dates on or after August 15 but before December 31, you must submit an acreage report for all such crops on or before the latest applicable acreage reporting date for such crops; and

(2) If you insure multiple crops that have final planting dates on or after December 31 but before August 15, you must submit an acreage report for all such crops on or before the latest applicable acreage reporting date for such crops.

(3) Notwithstanding the provisions in sections 6(a) (1) and (2):

(i) If the Special Provisions designate separate planting periods for a crop, you must submit an acreage report for each planting period on or before the acreage reporting date contained in the Special Provisions for the planting period; and

(ii) If planting of the insured crop continues after the final planting date or you are prevented from planting during the late planting period, the acreage reporting date will be the later of:

(A) The acreage reporting date contained in the Special Provisions;

(B) The date determined in accordance with sections (a)(1) or (2); or

(C) Five (5) days after the end of the late planting period for the insured crop, if applicable.

(b) If you do not have a share in an insured crop in the county for the crop year, you must submit an acreage report, on or before the acreage reporting date, so indicating.

(c) Your acreage report must include the following information, if applicable:

(1) All acreage of the crop in the county (insurable and not insurable) in which you have a share;

(2) Your share at the time coverage begins;

(3) The practice;

(4) The type; and

(5) The date the insured crop was planted.

(d) Because incorrect reporting on the acreage report may have the effect of changing your premium and any indemnity that may be due, you may not revise this report after the acreage reporting date without our consent.

(e) We may elect to determine all premiums and indemnities based on the information you submit on the acreage report or upon the factual circumstances we determine to have existed.

(f) If you do not submit an acreage report by the acreage reporting date, or if you fail to report all units, we may elect to determine by unit the insurable crop acreage, share, type and practice, or to deny liability on such units. If we deny liability for the unreported units, your share of any production from the unreported units will be allocated, for loss purposes only, as production to count to the reported units in proportion to the liability on each reported unit.

(g) If the information reported by you on the acreage report for share, acreage, practice, type or other material information is inconsistent with the information that is determined to actually exist for a unit and results in:

(1) A lower liability than the actual liability determined, the production guarantee or amount of insurance on the unit will be reduced to an amount that is consistent with the reported information. In the event that insurable acreage is under-reported for any unit, all production or value from insurable acreage in that unit will be considered production or value to count in determining the indemnity; and

(2) A higher liability than the actual liability determined, the information contained in the acreage report will be revised to be consistent with the correct information. If we discover that you have incorrectly reported any information on the acreage report for any crop year, you may be required to provide documentation in subsequent crop years that substantiates your report of acreage for those crop years, including, but not limited to, an acreage measurement service at your own expense.

(h) Errors in reporting units may be corrected by us at the time of adjusting a loss to reduce our liability and to conform to applicable unit division guidelines.

7. Annual Premium

(a) The annual premium is earned and payable at the time coverage begins. You will be billed for premium due not earlier than the premium billing date specified in the Special Provisions. The premium due, plus any accrued interest, will be considered delinquent if it is not paid on or before the termination date specified in the Crop Provisions.

(b) Any amount you owe us related to any crop insured with us under the authority of the Act will be deducted from any prevented planting payment or indemnity due you for any crop insured with us under the authority of the Act.

(c) The annual premium amount is determined, as applicable, by either:

(1) Multiplying the production guarantee per acre times the price election, times the premium rate, times the insured acreage, times your share at the time coverage begins, and times any premium adjustment percentages that may apply; or

(2) Multiplying the amount of insurance per acre times the premium rate, times the insured acreage, times your share at the time coverage begins, and times any premium adjustment percentages that may apply.

(d) The premium will be computed using the price election or amount of insurance you elect or that we assign in accordance with section 3(b).

8. Insured Crop

(a) The insured crop will be that shown on your accepted application and as specified in the Crop Provisions or Special Provisions and must be grown on insurable acreage.

(b) A crop which will NOT be insured will include, but will not be limited to, any crop:

(1) If the farming practices carried out are not in accordance with the farming practices for which the premium rates, production guarantees or amounts of insurance have been established, unless insurance is allowed by a written agreement;

(2) Of a type, class or variety established as not adapted to the area or excluded by the policy provisions;

(3) That is a volunteer crop;

(4) That is a second crop following the same crop (insured or not insured) harvested in the same crop year unless specifically permitted by the Crop Provisions or the Special Provisions;

(5) That is planted for the development or production of hybrid seed or for experimental purposes, unless permitted by the Crop Provisions or by written agreement to insure such crop; or

(6) That is used solely for wildlife protection or management. If the lease states that specific acreage must remain unharvested, only that acreage is uninsurable. If the lease specifies that a percentage of the crop must be left unharvested, your share will be reduced by such percentage.

9. Insurable Acreage

(a) Acreage planted to the insured crop in which you have a share is insurable except acreage:

(1) That has not been planted and harvested within one of the 3 previous crop years, unless:

(i) Such acreage was not planted:

(A) To comply with any other USDA program;

(B) Because of crop rotation, (*e.g.*, corn, soybean, alfalfa; and the alfalfa remained for 4 years before the acreage was planted to corn again);

(C) Due to an insurable cause of loss that prevented planting; or

(D) Because a perennial crop was grown on the acreage;

(ii) Such acreage was planted but was not harvested due to an insurable cause of loss; or

(iii) The Crop Provisions specifically allow insurance for such acreage;

(2) That has been strip-mined, unless otherwise approved by written agreement, or unless an agricultural commodity other than a cover, hay, or forage crop (except corn silage), has been harvested from the acreage for at least five crop years after the strip-mined land was reclaimed;

(3) On which the insured crop is damaged and it is practical to replant the insured crop, but the insured crop is not replanted;

(4) That is interplanted, unless allowed by the Crop Provisions;

(5) That is otherwise restricted by the Crop Provisions or Special Provisions; or

(6) That is planted in any manner other than as specified in the policy provisions for the crop unless a written agreement to such planting exists.

(b) If insurance is provided for an irrigated practice, you must report as irrigated only that acreage for which you have adequate facilities and adequate water, or the reasonable expectation of receiving adequate water at the time coverage begins, to carry out a good irrigation practice. If you knew or had reason to know that your water may be reduced before coverage begins, no reasonable expectation exists.

(c) Notwithstanding the provisions in section 8(b)(1), if acreage is irrigated and we do not provide a premium rate for an irrigated practice, you may either report and insure the irrigated acreage as ''non-irrigated,'' or report the irrigated acreage as not insured.

(d) We may restrict the amount of acreage that we will insure to the amount allowed under any acreage limitation program established by the United States Department of Agriculture if we notify you of that restriction prior to the sales closing date.

10. Share Insured.

(a) Insurance will attach only to the share of the person completing the application and will not extend to any other person having a share in the crop unless the application clearly states that:

(1) The insurance is requested for an entity such as a partnership or a joint venture; or

(2) You as landlord will insure your tenant's share, or you as tenant will insure your landlord's share. In this event, you must provide evidence of the other party's approval (lease, power of attorney, etc.). Such evidence will be retained by us. You also must clearly set forth the percentage shares of each person on the acreage report.

(b) We may consider any acreage or interest reported by or for your spouse, child or any member of your household to be included in your share.

(c) Acreage rented for a percentage of the crop, or a lease containing provisions for **both** a minimum payment (such as a specified amount of cash, bushels, pounds, *etc.*,) **and** a crop share will be considered a crop share lease.

(d) Acreage rented for cash, or a lease containing provisions for **either** a minimum payment **or** a crop share (such as a 50/50 share or $100.00 per acre, whichever is greater) will be considered a cash lease.

11. Insurance Period.

(a) Except for prevented planting coverage (see section 17), coverage begins on each unit or part of a unit at the later of:

(1) The date we accept your application (For the purposes of this paragraph, the date of acceptance is the date that you submit a properly executed application in accordance with section 2);

(2) The date the insured crop is planted; or

(3) The calendar date contained in the Crop Provisions for the beginning of the insurance period.

(b) Coverage ends at the earliest of:

(1) Total destruction of the insured crop on the unit;

(2) Harvest of the unit;

(3) Final adjustment of a loss on a unit;

(4) The calendar date contained in the Crop Provisions for the end of the insurance period;

(5) Abandonment of the crop on the unit; or

(6) As otherwise specified in the Crop Provisions.

12. Causes of Loss.

The insurance provided is against only unavoidable loss of production directly caused by specific causes of loss contained in the Crop Provisions. All other causes of loss, including but not limited to the following, are NOT covered:

(a) Negligence, mismanagement, or wrongdoing by you, any member of your family or household, your tenants, or employees;

(b) Failure to follow recognized good farming practices for the insured crop;

(c) Water contained by any governmental, public, or private dam or reservoir project;

(d) Failure or breakdown of irrigation equipment or facilities; or

(e) Failure to carry out a good irrigation practice for the insured crop, if applicable.

13. Replanting Payment.

(a) If allowed by the Crop Provisions, a replanting payment may be made on an insured crop replanted after we have given consent and the acreage replanted is at least the lesser of 20 acres or 20 percent of the insured planted acreage for the unit (as determined on the final planting date or within the late planting period if a late planting period is applicable).

(b) No replanting payment will be made on acreage:

(1) On which our appraisal establishes that production will exceed the level set by the Crop Provisions;

(2) Initially planted prior to the earliest planting date established by the Special Provisions; or

(3) On which one replanting payment has already been allowed for the crop year.

(c) The replanting payment per acre will be your actual cost for replanting, but will not exceed the amount determined in accordance with the Crop Provisions.

(d) No replanting payment will be paid if we determine it is not practical to replant.

14. Duties in the Event of Damage or Loss.

Your Duties—

(a) In case of damage to any insured crop you must:

(1) Protect the crop from further damage by providing sufficient care;

(2) Give us notice within 72 hours of your initial discovery of damage (but not later than 15 days after the end of the insurance period), by unit, for each insured crop (we may accept a notice of loss provided later than 72 hours after your initial discovery if we still have the ability to accurately adjust the loss);

(3) Leave representative samples intact for each field of the damaged unit as may be required by the Crop Provisions; and

(4) Cooperate with us in the investigation or settlement of the claim, and, as often as we reasonably require:

(i) Show us the damaged crop;

(ii) Allow us to remove samples of the insured crop; and

(iii) Provide us with records and documents we request and permit us to make copies.

(b) You must obtain consent from us before, and notify us after you:

(1) Destroy any of the insured crop that is not harvested;

(2) Put the insured crop to an alternative use;

(3) Put the acreage to another use; or

(4) Abandon any portion of the insured crop. We will not give consent for any of the actions in sections 14(b) (1) through (4) if it is practical to replant the crop or until we have made an appraisal of the potential production of the crop.

(c) In addition to complying with all other notice requirements, you must submit a claim for indemnity declaring the amount of your loss not later than 60 days after the end of the insurance period. This claim must include all the information we require to settle the claim.

(d) Upon our request, you must:

(1) Provide a complete harvesting and marketing record of each insured crop by unit including separate records showing the same information for production from any acreage not insured; and

(2) Submit to examination under oath.

(e) You must establish the total production or value received for the insured crop on the unit, that any loss of production or value occurred during the insurance period, and that the loss of production or value was directly caused by one or more of the insured causes specified in the Crop Provisions.

(f) All notices required in this section that must be received by us within 72 hours may be made by telephone or in person to your crop insurance agent but must be confirmed in writing within 15 days.

Our Duties—

(a) If you have complied with all the policy provisions, we will pay your loss within 30 days after:

(1) We reach agreement with you;

(2) Completion of arbitration or appeal proceedings; or

(3) The entry of a final judgment by a court of competent jurisdiction.

(b) In the event we are unable to pay your loss within 30 days, we will give you notice of our intentions within the 30-day period.

(c) We may defer the adjustment of a loss until the amount of loss can be accurately determined. We will not pay for additional damage resulting from your failure to provide sufficient care for the crop during the deferral period.

(d) We recognize and apply the loss adjustment procedures established or approved by the Federal Crop Insurance Corporation.

15. Production Included in Determining Indemnities.

(a) The total production to be counted for a unit will include all production determined in accordance with the policy.

(b) The amount of production of any unharvested insured crop may be determined on the basis of our field appraisals conducted after the end of the insurance period.

(c) If you elect to exclude hail and fire as insured causes of loss and the insured crop

is damaged by hail or fire, appraisals will be made as described in the applicable Form FCI–78 ''Request To Exclude Hail and Fire'' or a form containing the same terms approved by the Federal Crop Insurance Corporation.

16. Late Planting.

Unless limited by the Crop Provisions, insurance will be provided for acreage planted to the insured crop after the final planting date in accordance with the following:

(a) The production guarantee or amount of insurance for each acre planted to the insured crop during the late planting period will be reduced by 1 percent per day for each day planted after the final planting date.

(b) Acreage planted after the late planting period (or after the final planting date for crops that do not have a late planting period) may be insured as follows:

(1) The production guarantee or amount of insurance for each acre planted as specified in this subsection will be determined by multiplying the production guarantee or amount of insurance that is provided for acreage of the insured crop that is timely planted by the prevented planting coverage level percentage you elected, or that is contained in the Crop Provisions if you did not elect a prevented planting coverage level percentage;

(2) Planting on such acreage must have been prevented by the final planting date (or during the late planting period, if applicable) by an insurable cause occurring within the insurance period for prevented planting coverage;

(3) The production guarantee for any acreage on which an insured cause of loss prevents completion of planting, as specified in the definition of ''planted acreage'' (*e.g.*, seed is broadcast on the soil surface but cannot be incorporated), will be determined as indicated in this section; and

(4) All production from acreage as specified in this section will be included as production to count for the unit.

(c) The premium amount for insurable acreage specified in section 16 (a) or (b) will be the same as that for timely planted acreage. If the amount of premium you are required to pay (gross premium less our subsidy) for such acreage exceeds the liability, coverage for those acres will not be provided (no premium will be due and no indemnity will be paid).

17. Prevented Planting

(a) Unless limited by the policy provisions, a prevented planting payment may be made to you for eligible acreage if:

(1) You were prevented from planting the insured crop by an insured cause that occurs:

(i) On or after the sales closing date contained in the Special Provisions for the insured crop in the county for the crop year the application for insurance is accepted; or

(ii) For any subsequent crop year, on or after the sales closing date for the previous crop year for the insured crop in the county, provided insurance has been in force continuously since that date. Cancellation for the purpose of transferring the policy to a different insurance provider for the subsequent crop year will not be considered a break in continuity for the purpose of the preceding sentence; and

(2) You include any acreage of the insured crop that was prevented from being planted on your acreage report.

(b) The actuarial documents may contain additional levels of prevented planting coverage that you may purchase for the insured crop:

(1) Such purchase must be made on or before the sales closing date.

(2) If you do not purchase one of those additional levels by the sales closing date, you will receive the prevented planting coverage specified in the Crop Provisions.

(3) If you have a Catastrophic Risk Protection Endorsement for any crop, the additional levels of prevented planting coverage will not be available for that crop.

(4) You may not increase your elected or assigned prevented planting coverage level for any crop year if a cause of loss that will or could prevent planting is evident prior to the time you wish to change your prevented planting coverage level.

(c) The premium amount for acreage that is prevented from being planted will be the same as that for timely planted acreage. If the amount of premium you are required to pay (gross premium less our subsidy) for acreage that is prevented from being planted exceeds the liability on such acreage, coverage for those acres will not be provided (no premium will be due and no indemnity will be paid for such acreage).

(d) Drought or failure of the irrigation water supply will not be considered to be an insurable cause of loss for the purposes of prevented planting unless, on the final planting date:

(1) For non-irrigated acreage, the area that is prevented from being planted is classified by the Palmer Drought Severity Index as being in a severe or extreme drought; or

(2) For irrigated acreage, there is not a reasonable probability of having adequate water to carry out an irrigated practice.

(e) The maximum number of acres that may be eligible for a prevented planting payment for any crop will be determined as follows:

(1) The total number of acres eligible for prevented planting coverage for all crops cannot exceed the number of acres of cropland in your farming operation for the crop year, unless you are eligible for prevented planting coverage on double cropped acreage in accordance with section 17(f) (4) or (5). The eligible acres for each insured crop will be determined in accordance with the following table.

| Type of crop | Eligible acres if, in any of the 4 most recent crop years, you have produced any crop for which insurance was available | Eligible acres if, in any of the 4 most recent crop years, you have not produced any crop for which insurance was available |
|---|---|---|
| (i) The crop is not required to be contracted with a processor to be insured. | (A) The maximum number of acres certified for APH purposes or reported for insurance for the crop in any one of the 4 most recent crop years (not including reported prevented planting acreage that was planted to a substitute crop other than an approved cover crop). The number of acres determined above for a crop may be increased by multiplying it by the ratio of the total cropland acres that you are farming this year (if greater) to the total cropland acres that you farmed in the previous year, provided that you submit proof to us that for the current crop year you have purchased or leased additional land or that acreage will be released from any USDA program which prohibits harvest of a crop. Such acreage must have been purchased, leased, or released from the USDA program, in time to plant it for the current crop year using good farming practices. No cause of loss that will or could prevent planting may be evident at the time the acreage is purchased, leased, or released from the USDA program. | (B) The number of acres specified on your intended acreage report which is submitted to us by the sales closing date for all crops you insure for the crop year and that is accepted by us. The total number of acres listed may not exceed the number of acres of cropland in your farming operation at the time you submit the intended acreage report. The number of acres determined above for a crop may only be increased by multiplying it by the ratio of the total cropland acres that you are farming this year (if greater) to the number of acres listed on your intended acreage report, if you meet the conditions stated in section 17(e)(1)(i)(A). |

| Type of crop | Eligible acres if, in any of the 4 most recent crop years, you have produced any crop for which insurance was available | Eligible acres if, in any of the 4 most recent crop years, you have not produced any crop for which insurance was available |
|---|---|---|
| (ii)The crop must be contracted with a processor to be insured. | (A) The number of acres of the crop specified in the processor contract, if the contract specifies a number of acres contracted for the crop year; or the result of dividing the quantity of production stated in the processor contract by your approved yield, if the processor contract specifies a quantity of production that will be accepted. (For the purposes of establishing the number of prevented planting acres, any reductions applied to the transitional yield for failure to certify acreage and production for four prior years will not be used.). | (B) The number of acres of the crop as determined in section 17(e)(1)(ii)(A). |

(2) Any eligible acreage determined in accordance with the table contained in section 17(e)(1) will be reduced by subtracting the number of acres of the crop (insured and uninsured) that are timely and late planted, including acreage specified in section 16(b).

(f) Regardless of the number of eligible acres determined in section 17(e), prevented planting coverage will not be provided for any acreage:

(1) If at least one contiguous block of prevented planting acreage does not constitute at least 20 acres or 20 percent of the insurable crop acreage in the unit, whichever is less. We will assume that any prevented planting acreage within a field that contains planted acreage would have been planted to the same crop that is planted in the field, unless the prevented planting acreage constitutes at least 20 acres or 20 percent of the insurable acreage in the field and you can prove that you have previously produced both crops in the same field in the same crop year;

(2) For which the actuarial documents do not designate a premium rate unless a written agreement designates such premium rate;

(3) Used for conservation purposes or intended to be left unplanted under any program administered by the USDA;

(4) On which the insured crop is prevented from being planted, if you or any other person receives a prevented planting payment for any crop for the same acreage in the same crop year (excluding share arrangements), unless you have coverage greater than the Catastrophic Risk Protection Plan of Insurance and have records of acreage and production that are used to determine your approved yield that show the acreage was double-cropped in each of the last 4 years in which the insured crop was grown on the acreage;

(5) On which the insured crop is prevented from being planted, if any crop from which any benefit is derived under any program administered by the USDA is planted and fails, or if any crop is harvested, hayed or grazed on the same acreage in the same crop year (other than a cover crop which may be hayed or grazed after the final planting date for the insured crop), unless you have coverage greater than that applicable to the Catastrophic Risk Protection Plan of Insurance and have records of acreage and production that are used to determine your approved yield that show the acreage was double-cropped in each of the last 4 years in which the insured crop was grown on the acreage;

(6) Of a crop that is prevented from being planted if a cash lease payment is also received for use of the same acreage in the same crop year (not applicable if acreage is leased for haying or grazing only) (If you state that you will not be cash renting the acreage and claim a prevented planting payment on the acreage, you could be subject to civil and criminal sanctions if you cash rent the acreage and do not return the prevented planting payment for it);

(7) For which planting history or conservation plans indicate that the acreage would have remained fallow for crop rotation purposes;

(8) That exceeds the number of acres eligible for a prevented planting payment;

(9) That exceeds the number of eligible acres physically available for planting;

(10) For which you cannot provide proof that you had the inputs available to plant and produce a crop with the expectation of at least producing the yield used to determine the production guarantee or amount of insurance (Evidence that you have previously planted the crop on the unit will be considered adequate proof unless your planting practices or rotational requirements show that the acreage would have remained fallow or been planted to another crop);

(11) Based on an irrigated practice production guarantee or amount of insurance unless adequate irrigation facilities were in place to carry out an irrigated practice on the acreage prior to the insured cause of loss that prevented you from planting; or

(12) Of a crop type that you did not plant in at least one of the four most recent years. Types for which separate price elections, amounts of insurance, or production guarantees are available must be included in your APH database in at least one of the most recent four years, or crops that do not require yield certification (crops for which the insurance guarantee is not based on APH) must be reported on your acreage report in at least one of the four most recent crop years except as allowed in section 17(e)(1)(i)(B).

(g) The prevented planting payment for any eligible acreage within a unit will be determined by:

(1) Multiplying the liability per acre for timely planted acreage of the insured crop (the amount of insurance per acre or the production guarantee per acre multiplied by the price election for the crop, or type if applicable) by the prevented planting coverage level percentage you elected, or that is contained in the Crop Provisions if you did not elect a prevented planting coverage level percentage;

(2) Multiplying the result of section 17(g)(1) by the number of eligible prevented planting acres in the unit; and

(3) Multiplying the result of section 17(g)(2) by your share.

18. Written Agreements

Terms of this policy which are specifically designated for the use of written agreements may be altered by written agreement in accordance with the following:

(a) You must apply in writing for each written agreement no later than the sales closing date, except as provided in section 18(e);

(b) The application for a written agreement must contain all variable terms of the contract between you and us that will be in effect if the written agreement is not approved;

(c) If approved, the written agreement will include all variable terms of the contract, including, but not limited to, crop type or variety, the guarantee, premium rate, and price election;

(d) Each written agreement will only be valid for one crop year (If a written agreement is not specifically renewed the following year, insurance coverage for subsequent crop years will be in accordance with the printed policy); and

(e) An application for a written agreement submitted after the sales closing date may be approved if you demonstrate your physical inability to apply prior to the sales closing date, or it is submitted in accordance with any regulation which may be promulgated under 7 CFR part 400, and after inspection of the acreage by us, if required, it is determined that no loss has occurred and the crop is insurable in accordance with the policy and written agreement provisions.

19. Crops as Payment

You must not abandon any crop to us. We will not accept any crop as compensation for payments due us.

For FCIC policies

20. Appeals

All determinations required by the policy will be made by us. If you disagree with our determinations, you may obtain reconsideration of or appeal those

determinations in accordance with appeal provisions published at 7 CFR part 11.

For reinsured policies

20. Arbitration

(a) If you and we fail to agree on any factual determination, the disagreement will be resolved in accordance with the rules of the American Arbitration Association. Failure to agree with any factual determination made by FCIC must be resolved through the FCIC appeal provisions published at 7 CFR part 11.

(b) No award determined by arbitration or appeal can exceed the amount of liability established or which should have been established under the policy.

21. Access to Insured Crop and Records, and Record Retention

(a) We reserve the right to examine the insured crop as often as we reasonably require.

(b) For three years after the end of the crop year, you must retain, and provide upon our request, complete records of the harvesting, storage, shipment, sale, or other disposition of all the insured crop produced on each unit. This requirement also applies to the records used to establish the basis for the production report for each unit. You must also provide upon our request, separate records showing the same information for production from any acreage not insured. We may extend the record retention period beyond three years by notifying you of such extension in writing. Your failure to keep and maintain such records will, at our option, result in:

(1) Cancellation of the policy;

(2) Assignment of production to the units by us;

(3) Combination of the optional units; or

(4) A determination that no indemnity is due.

(c) Any person designated by us will, at any time during the record retention period, have access:

(1) To any records relating to this insurance at any location where such records may be found or maintained; and

(2) To the farm.

(d) By applying for insurance under the authority of the Act or by continuing insurance for which you previously applied, you authorize us, or any person acting for us, to obtain records relating to the insured crop from any person who may have custody of those records including, but not limited to, FSA offices, banks, warehouses, gins, cooperatives, marketing associations, and accountants. You must assist us in obtaining all records which we request from third parties.

22. Other Insurance

(a) *Other Like Insurance.* You must not obtain any other crop insurance issued under the authority of the Act on your share of the insured crop. If we determine that more than one policy on your share is intentional, you may be subject to the sanctions authorized under this policy, the Act, or any other applicable statute. If we determine that the violation was not intentional, the policy with the earliest date of application will be in force and all other policies will be void. Nothing in this paragraph prevents you from obtaining other insurance not issued under the Act.

(b) *Other Insurance Against Fire.* If you have other insurance, whether valid or not, against damage to the insured crop by fire during the insurance period, and you have not excluded coverage for fire from this policy, we will be liable for loss due to fire only for the smaller of:

(1) The amount of indemnity determined pursuant to this policy without regard to such other insurance; or

(2) The amount by which the loss from fire is determined to exceed the indemnity paid or payable under such other insurance.

(c) For the purpose of subsection (b) of this section the amount of loss from fire will be the difference between the fair market value of the production of the insured crop on the unit involved before the fire and after the fire, as determined from appraisals made by us.

23. Conformity to Food Security Act

Although your violation of a number of federal statutes, including the Act, may cause cancellation, termination, or voidance of your insurance contract, you should be specifically aware that your policy will be canceled if you are determined to be ineligible to receive benefits under the Act due to violation of the controlled substance provisions (title XVII) of the Food Security Act of 1985 (Pub. L. 99–198) and the regulations promulgated under the Act by USDA. Your insurance policy will be canceled if you are determined, by the appropriate Agency, to be in violation of these provisions. We will recover any and all monies paid to you or received by you during your period of ineligibility, and your premium will be refunded, less a reasonable amount for expenses and handling not to exceed 20 percent of the premium paid or to be paid by you.

For FCIC policies

24. Amounts Due Us

(a) Any amount illegally or erroneously paid to you or that is owed to us but is delinquent may be recovered by us through offset by deducting it from any loan or payment due you under any Act of Congress or program administered by any United States Government Agency, or by other collection action.

(b) Interest will accrue at the rate of 1.25 percent simple interest per calendar month, or any part thereof, on any unpaid premium amount due us. With respect to any premiums owed, interest will start to accrue on the first day of the month following the premium billing date specified in the Special Provisions.

(c) For the purpose of any other amounts due us, such as repayment of indemnities found not to have been earned:

(1) Interest will start on the date that notice is issued to you for the collection of the unearned amount;

(2) Amounts found due under this paragraph will not be charged interest if payment is made within 30 days of issuance of the notice by us;

(3) The amount will be considered delinquent if not paid within 30 days of the date the notice is issued by us;

(4) Penalties and interest will be charged in accordance with 31 U.S.C. 3717 and 4 CFR part 102; and

(5) The penalty for accounts more than 90 days delinquent is an additional 6 percent per annum.

(d) Interest on any amount due us found to have been received by you because of fraud, misrepresentation or presentation by you of a false claim will start on the date you received the amount with the additional 6 percent penalty beginning on the 31st day after the notice of amount due is issued to you. This interest is in addition to any other amount found to be due under any other federal criminal or civil statute.

(e) If we determine that it is necessary to contract with a collection agency, refer the debt to government collection centers, the Department of Treasury Offset Program, or to employ an attorney to assist in collection, you agree to pay all the expenses of collection.

(f) All amounts paid will be applied first to expenses of collection if any, second to the reduction of any penalties which may have been assessed, then to reduction of accrued interest, and finally to reduction of the principal balance.

For reinsured policies

24. Amounts Due Us

(a) Interest will accrue at the rate of 1.25 percent simple interest per calendar month, or any portion thereof, on any unpaid amount due us. For the purpose of premium amounts due us, the interest will start to accrue on the first day of the month following the premium billing date specified in the Special Provisions.

(b) For the purpose of any other amounts due us, such as repayment of indemnities found not to have been earned, interest will start to accrue on the date that notice is issued to you for the collection of the unearned amount. Amounts found due under this paragraph will not be charged interest if payment is made within 30 days of issuance of the notice by us. The amount will be considered delinquent if not paid within 30 days of the date the notice is issued by us.

(c) All amounts paid will be applied first to expenses of collection (see subsection (d) of this section) if any, second to the reduction of accrued interest, and then to the reduction of the principal balance.

(d) If we determine that it is necessary to contract with a collection agency or to employ an attorney to assist in collection, you agree to pay all of the expenses of collection.

(e) A portion of the amount paid to you to which you were not entitled may be collected through administrative offset from payments you receive from United States government agencies in accordance with 31 U.S.C. chapter 37.

25. Legal Action Against Us

(a) You may not bring legal action against us unless you have complied with all of the policy provisions.

(b) If you do take legal action against us, you must do so within 12 months of the date

of denial of the claim. Suit must be brought in accordance with the provisions of 7 U.S.C. 1508(j).

(c) Your right to recover damages (compensatory, punitive, or other), attorney's fees, or other charges is limited or excluded by this contract or by Federal Regulations.

26. Payment and Interest Limitations

(a) Under no circumstances will we be liable for the payment of damages (compensatory, punitive, or other), attorney's fees, or other charges in connection with any claim for indemnity, whether we approve or disapprove such claim.

(b) We will pay simple interest computed on the net indemnity ultimately found to be due by us or by a final judgment of a court of competent jurisdiction, from and including the 61st day after the date you sign, date, and submit to us the properly completed claim on our form. Interest will be paid only if the reason for our failure to timely pay is NOT due to your failure to provide information or other material necessary for the computation or payment of the indemnity. The interest rate will be that established by the Secretary of the Treasury under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611) and published in the **Federal Register** semiannually on or about January 1 and July 1 of each year, and may vary with each publication.

27. Concealment, Misrepresentation or Fraud

(a) If you have falsely or fraudulently concealed the fact that you are ineligible to receive benefits under the Act or if you or anyone assisting you has intentionally concealed or misrepresented any material fact relating to this policy:

(1) This policy will be voided; and

(2) You may be subject to remedial sanctions in accordance with 7 CFR part 400, subpart R.

(b) Even though the policy is void, you may still be required to pay 20 percent of the premium due under the policy to offset costs incurred by us in the service of this policy. If previously paid, the balance of the premium will be returned.

(c) Voidance of this policy will result in you having to reimburse all indemnities paid for the crop year in which the voidance was effective.

(d) Voidance will be effective on the first day of the insurance period for the crop year in which the act occurred and will not affect the policy for subsequent crop years unless a violation of this section also occurred in such crop years.

28. Transfer of Coverage and Right to Indemnity

If you transfer any part of your share during the crop year, you may transfer your coverage rights, if the transferee is eligible for crop insurance. We will not be liable for any more than the liability determined in accordance with your policy that existed before the transfer occurred. The transfer of coverage rights must be on our form and will not be effective until approved by us in writing. Both you and the transferee are jointly and severally liable for the payment of the premium. The transferee has all rights and responsibilities under this policy consistent with the transferee's interest.

29. Assignment of Indemnity

You may assign to another party your right to an indemnity for the crop year. The assignment must be on our form and will not be effective until approved in writing by us. The assignee will have the right to submit all loss notices and forms as required by the policy. If you have suffered a loss from an insurable cause and fail to file a claim for indemnity within 60 days after the end of the insurance period, the assignee may submit the claim for indemnity not later than 15 days after the 60-day period has expired. We will honor the terms of the assignment only if we can accurately determine the amount of the claim. However, no action will lie against us for failure to do so.

30. Subrogation (Recovery of Loss From A Third Party)

Since you may be able to recover all or a part of your loss from someone other than us, you must do all you can to preserve this right. If we pay you for your loss, your right to recovery will, at our option, belong to us. If we recover more than we paid you plus our expenses, the excess will be paid to you.

31. Applicability of State and Local Statutes

If the provisions of this policy conflict with statutes of the State or locality in which this policy is issued, the policy provisions will prevail. State and local laws and regulations in conflict with federal statutes, this policy, and the applicable regulations do not apply to this policy.

32. Descriptive Headings

The descriptive headings of the various policy provisions are formulated for convenience only and are not intended to affect the construction or meaning of any of the policy provisions.

33. Notices

(a) All notices required to be given by you must be in writing and received by your crop insurance agent within the designated time unless otherwise provided by the notice requirement. Notices required to be given immediately may be by telephone or in person and confirmed in writing. Time of the notice will be determined by the time of our receipt of the written notice. If the date by which you are required to submit a report or notice falls on Saturday, Sunday, or a Federal holiday, or if your agent's office is, for any reason, not open for business on the date you are required to submit such notice or report, such notice or report must be submitted on the next business day.

(b) All notices and communications required to be sent by us to you will be mailed to the address contained in your records located with your crop insurance agent. Notice sent to such address will be conclusively presumed to have been received by you. You should advise us immediately of any change of address.

34. Unit Division

(a) Unless limited by the Crop Provisions or Special Provisions, a basic unit as defined in section 1 of the Basic Provisions may be divided into optional units if, for each optional unit, you meet the following:

(1) You must plant the crop in a manner that results in a clear and discernible break in the planting pattern at the boundaries of each optional unit;

(2) All optional units you select for the crop year are identified on the acreage report for that crop year (Units will be determined when the acreage is reported but may be adjusted or combined to reflect the actual unit structure when adjusting a loss. No further unit division may be made after the acreage reporting date for any reason);

(3) You have records, that are acceptable to us, of planted acreage and the production from each optional unit for at least the last crop year used to determine your production guarantee;

(4) You have records of marketed or stored production from each optional unit maintained in such a manner that permits us to verify the production from each optional unit, or the production from each optional unit is kept separate until loss adjustment is completed by us; and

(b) Each optional unit must meet one or more of the following, unless otherwise specified in the Crop Provisions or allowed by written agreement:

(1) Optional units may be established if each optional unit is located in a separate section. In the absence of sections, we may consider parcels of land legally identified by other methods of measure such as Spanish grants, as the equivalents of sections for unit purposes. In areas which have not been surveyed using sections, section equivalents or in areas where boundaries are not readily discernible, each optional unit must be located in a separate FSA farm serial number; and

(2) In addition to, or instead of, establishing optional units by section, section equivalent or FSA farm serial number, optional units may be based on irrigated and non-irrigated acreage. To qualify as separate irrigated and non-irrigated optional units, the non-irrigated acreage may not continue into the irrigated acreage in the same rows or planting pattern. The irrigated acreage may not extend beyond the point at which the irrigation system can deliver the quantity of water needed to produce the yield on which the guarantee is based, except the corners of a field in which a center-pivot irrigation system is used may be considered as irrigated acreage if the corners of a field in which a center-pivot irrigation system is used do not qualify as a separate non-irrigated optional unit. In this case, production from both practices will be used to determine your approved yield.

(c) Optional units are not available for crops insured under a Catastrophic Risk Protection Endorsement.

(d) If you do not comply fully with the provisions in this section, we will combine all optional units that are not in compliance with these provisions into the basic unit from which they were formed. We will combine the optional units at any time we discover that you have failed to comply with these provisions. If failure to comply with these provisions is determined by us to be inadvertent, and the optional units are combined into a basic unit, that portion of the additional premium paid for the optional units that have been combined will be refunded to you for the units combined.

6. Amend § 457.101 as follows:

(a) Revise the introductory text to read as follows:

**§ 457.101 Small grains crop insurance provisions.**

The small grains crop insurance provisions for the 1998 and succeeding crop years in counties with a contract change date of December 31, and for the 1999 and succeeding crop years in counties with a contract change date of June 30, are as follows:

* * * * *

(b) Revise the paragraph preceding section 1 to read as follows:

* * * * *

If a conflict exists among the policy provisions, the order of priority is as follows: (1) The Catastrophic Risk Protection Endorsement, if applicable; (2) the Special Provisions; (3) these Crop Provisions; and (4) the Basic Provisions with (1) controlling (2), etc.

* * * * *

(c) Remove the alphabetic paragraph designations in section 1 and the definitions of ''days,'' ''final planting date,'' ''good farming practices,'' ''interplanted,'' ''irrigated practice,'' ''late planted,'' ''late planting period,'' ''practical to replant,'' ''production guarantee,'' ''replanting,'' and ''timely planted;'' revise the definitions of ''planted acreage'' and ''prevented planting,'' and add the definition of ''sales closing date'' to read as follows:

* * * * *

1. Definitions

* * * * *

*Planted acreage*—In addition to the definition contained in the Basic Provisions, except for flax, land on which seed is initially spread onto the soil surface by any method and subsequently is mechanically incorporated into the soil in a timely manner and at the proper depth will be considered planted. Flax seed must initially be planted in rows to be considered planted, unless otherwise provided by the Special Provisions, actuarial documents, or by written agreement.

*Prevented planting*—In lieu of the definition contained in the Basic Provisions, failure to plant the insured crop with proper equipment by the latest final planting date designated in the Special Provisions for the insured crop in the county or by the end of the late planting period. You must have been prevented from planting the insured crop due to an insured cause of loss that also prevented most producers from planting on acreage with similar characteristics in the surrounding area.

*Sales closing date*—In lieu of the definition contained in the Basic Provisions, a date contained in the Special Provisions by which an application must be filed and by which you may change your crop insurance coverage for a crop year. If the Special Provisions provide a sales closing date for both winter and spring types of the insured crop and you plant any insurable acreage of the winter type, you may not change your crop insurance coverage after the sales closing date for the winter type.

* * * * *

(d) Remove the words ''Common Crop Insurance Policy'' and add in their place, the words ''Basic Provisions'' in the following places:

i. Section 3;

ii. Section 4;

iii. Sections 6 (b)(1) and (b)(2);

iv. Section 7, introductory text;

v. Section 8, introductory text;

vi. Sections 9(a)(1) and (c); and

vii. Section 10.

(e) Remove the words ''actuarial table'' and add in their place, the words ''actuarial documents'' in section 6 paragraphs (a) and (b)(2).

(f) Remove the word ''provides'' and add in its place, the word ''provide'' in section 6 paragraph (b)(2), the first sentence.

(g) Revise section 2 to read as follows:

* * * * *

2. Unit Division

In addition to the requirements of section 34(b) of the Basic Provisions, for wheat only, in addition to, or instead of, establishing optional units by section, section equivalent or FSA farm serial number and by irrigated and non-irrigated practices, optional units may be established if each optional unit contains only initially planted winter wheat or only initially planted spring wheat. Optional units may be established in this manner only in counties having both winter and spring type final planting dates as designated in the Special Provisions.

* * * * *

(h) Revise section 6(b)(1) to read as follows:

* * * * *

6. Insured Crop

(a) * * *

(b) * * *

(1) May report all planted acreage when you report your acreage for the crop year and specify any acreage to be destroyed as uninsurable acreage. (By doing so, no coverage will be considered to have attached on the specified acreage and no premium will be due for such acreage. If you do not destroy such acreage, you will be subject to the under-reporting provisions contained in section 6 of the Basic Provisions); or

* * * * *

(i) Revise sections 7 (a)(1)(i), (a)(1)(ii), and (a)(2)(i) to read as follows:

* * * * *

7. Insurance Period

* * * * *

(a) * * *

(1) * * *

(i) The acreage must be planted on or before the final planting date designated in the Special Provisions for the insured crop except as allowed in section 12 of these Crop Provisions and section 16 of the Basic Provisions.

(ii) Any acreage of the insured crop damaged before the final planting date, to the extent that producers in the surrounding area would not normally further care for the crop, must be replanted unless we agree that it is not practical to replant.

(2) * * *

(i) The acreage must be planted on or before the final planting date designated in the Special Provisions for the type (winter or spring) except as allowed in section 12 of these Crop Provisions and section 16 of the Basic Provisions.

* * * * *

(j) Revise section 12 to read as follows:

* * * * *

12. Late Planting

A late planting period is not applicable to fall-planted wheat. Any winter wheat that is planted after the fall final planting date in counties for which the Special Provisions also contain a final planting date for spring wheat will not be insured. Any winter wheat that is planted after the fall final planting date in counties for which the Special Provisions contain only a fall final planting date will not be insured unless you were prevented from planting the winter wheat by the fall final planting date. Such acreage will be insurable, and the production guarantee and premium for the acreage will be determined in accordance with sections 16 (b) and (c) of the Basic Provisions.

(k) Add a section 13 to read as follows:

* * * * *

13. Prevented Planting

(a) In addition to the provisions contained in section 17 of the Basic Provisions, in counties for which the Special Provisions designate a spring final planting date, your prevented planting production guarantee will be based on your approved yield for spring-planted acreage of the insured crop.

(b) Your prevented planting coverage will be 60 percent of your production guarantee for timely planted acreage. If you have limited or additional levels of coverage, as specified in 7 CFR part 400, subpart T, and pay an additional premium, you may increase your prevented planting coverage to a level specified in the actuarial documents.

7. Amend § 457.104 as follows:

(a) Revise the introductory text to read as follows:

**§ 457.104 Cotton crop insurance provisions.**

The cotton crop insurance provisions for the 1998 crop year are as follows:

* * * * *

(b) Revise the paragraph preceding section 1 to read as follows:

* * * * *

If a conflict exists among the policy provisions, the order of priority is as follows: (1) the Catastrophic Risk Protection Endorsement, if applicable; (2) the Special Provisions; (3) these Crop Provisions; and (4)

the Basic Provisions with (1) controlling (2), etc.

* * * * *

(c) Remove the alphabetic paragraph designations in section 1 and the definitions of ''days,'' ''final planting date,'' ''good farming practices,'' ''interplanted,'' ''irrigated practice,'' ''late planted,'' ''late planting period,'' ''practical to replant,'' ''prevented planting,'' ''replanting,'' ''timely planted,'' and ''written agreement'' and revise the definition of ''planted acreage'' to read as follows:

* * * * *

1. Definitions

* * * * *

*Planted acreage*—In addition to the definition contained in the Basic Provisions, cotton must be planted in rows, unless otherwise provided by the Special Provisions, actuarial documents, or by written agreement. The yield conversion factor normally applied to non-irrigated skip-row cotton acreage will not be used if the land between the rows of cotton is planted to any other spring planted crop.

* * * * *

(d) Remove the words ''Common Crop Insurance Policy'' and add in their place, the words ''Basic Provisions'' in the following places:

i. Section 3;

ii. Section 4;

iii. Section 5, introductory text;

iv. Section 6, introductory text;

v. Section 7, introductory text;

vi. Sections 8 (a) and (b);

vii. Section 9, introductory text; and

viii. Section 10(a).

* * * * *

(e) Remove section 2.

(f) Remove section 13 and redesignate sections 3 through 12 as sections 2 through 11 respectively.

(g) Remove the words ''actuarial table'' and add in their place, the words ''actuarial documents'' in redesignated section 5.

(h) Revise redesigned section 6(b) to read as follows:

* * * * *

6. Insurable Acreage

* * * * *

(a) * * *

(b) Any acreage of the insured crop damaged before the final planting date, to the extent that a majority of producers in the area would not normally further care for the crop, must be replanted unless we agree that it is not practical to replant.

* * * * *

(i) Revise redesignated section 7(a) to read as follows:

* * * * *

7. Insurance Period

(a) In lieu of section 11(b)(2) of the Basic Provisions, insurance will end upon the removal of the cotton from the field.

* * * * *

(j) Amend redesignated section 10(c)(1)(i)(E) to change the section reference therein from ''10'' to ''9''.

* * * * *

(k) Amend redesignated section 10(c)(1)(iii) to change the section reference therein from ''11.(d)'' to ''10(d)''.

* * * * *

(l) Revise redesignated section 11 to read as follows:

* * * * *

11. Prevented Planting

(a) In addition to the provisions contained in section 17 of the Basic Provisions, your prevented planting production guarantee will be based on your approved yield without adjustment for skip-row planting patterns.

(b) Your prevented planting coverage will be 45 percent of your production guarantee for timely planted acreage. If you have limited or additional levels of coverage, as specified in 7 CFR part 400, subpart T, and pay an additional premium, you may increase your prevented planting coverage to a level specified in the actuarial documents.

* * * * *

8. Amend § 457.105 as follows:

(a) Revise the introductory text to read as follows:

**§ 457.105 Extra long staple cotton crop insurance provisions.**

The extra long staple cotton crop insurance provisions for the 1998 crop year are as follows:

* * * * *

(b) Revise the paragraph preceding section 1 to read as follows:

* * * * *

If a conflict exists among the policy provisions, the order of priority is as follows: (1) the Catastrophic Risk Protection Endorsement, if applicable; (2) the Special Provisions; (3) these Crop Provisions; and (4) the Basic Provisions with (1) controlling (2), etc.

* * * * *

(c) Remove alphabetic paragraph designations in section 1 and the definitions of ''days,'' ''final planting date,'' ''good farming practices,'' ''interplanted,'' ''irrigated practice,'' ''practical to replant,'' ''prevented planting,'' ''timely planted,'' and ''written agreement'' and revise the definition of ''planted acreage'' to read as follows:

1. Definitions

* * * * *

*Planted acreage*—In addition to the definition contained in the Basic Provisions, cotton must be planted in rows, unless otherwise provided by the Special Provisions, actuarial documents, or by written agreement. The yield conversion factor normally applied to non-irrigated skip-row cotton acreage will not be used if the land between the rows of cotton is planted to any other spring planted crop.

* * * * *

(d) Remove the words ''Common Crop Insurance Policy'' and add in their place, the words ''Basic Provisions'' in the following places:

i. Section 3;

ii. Section 4;

iii. Section 5;

iv. Section 6, introductory text;

v. Section 7, introductory text;

vi. Sections 8 (a) and (b);

vii. Section 9, introductory text; and

viii. Section 10(a).

(e) Remove section 2.

(f) Redesignate sections 3 through 13 as sections 2 through 12 respectively.

(g) Remove the words ''actuarial table'' and add in their place, the words ''actuarial documents'' in redesignated section 5.

(h) Revise redesignated section 6(b) to read as follows:

* * * * *

6. Insurable Acreage

* * * * *

(a) * * *

(b) Any acreage of the insured crop damaged before the final planting date, to the extent that a majority of producers in the area would not normally further care for the crop, must be replanted unless we agree that it is not practical to replant.

* * * * *

(i) Revise redesignated section 7(a) to read as follows:

* * * * *

7. Insurance Period

(a) In lieu of section 11(b)(2) of the Basic Provisions, insurance will end upon the removal of the cotton from the field.

* * * * *

(j) Amend redesignated section 10(c)(1)(i)(E) to change the section reference therein from ''10'' to ''9''.

(k) Amend redesignated section 10(c)(1)(iii)(A) to change the section reference therein from ''11.(d) and (e)'' to ''10(d) and (e)''.

(l) Amend redesignated section 10(c)(1)(iii)(B) to change the section reference therein from ''11.(f)'' to ''10(f)''.

(m) Amend redesignated section 10(e) to change the section reference therein from ''11.(d)'' to ''10(d)''.

(n) Revise redesignated section 11 to read as follows:

* * * * *

11. Late Planting

A late planting period is not applicable to ELS cotton. Any ELS cotton that is planted after the final planting date will not be

insured unless you were prevented from planting it by the final planting date. Such acreage will be insurable, and the production guarantee and premium for the acreage will be determined in accordance with section 16 of the Basic Provisions.

* * * * *

(o) Revise redesignated section 12 to read as follows:

* * * * *

12. Prevented Planting

(a) In addition to the provisions contained in section 17 of the Basic Provisions, your prevented planting production guarantee will be based on your approved yield without adjustment for skip-row planting patterns.

(b) Your prevented planting coverage will be 45 percent of your production guarantee for timely planted acreage. If you have limited or additional levels of coverage, as specified in 7 CFR part 400, subpart T, and pay an additional premium, you may increase your prevented planting coverage to a level specified in the actuarial documents.

9. Amend § 457.106 as follows:

(a) Revise the introductory text to read as follows:

**§ 457.106 Texas citrus tree crop insurance provisions.**

The Texas citrus tree crop insurance provisions for the 1999 and succeeding crop years are as follows:

* * * * *

(b) Revise the paragraph preceding section 1 to read as follows:

If a conflict exists among the policy provisions, the order of priority is as follows: (1) The Catastrophic Risk Protection Endorsement, if applicable; (2) the Special Provisions; (3) these Crop Provisions; and (4) the Basic Provisions with (1) controlling (2), etc.

* * * * *

(c) Remove the definitions of ''days,'' ''deductible,'' ''FSA,'' ''non-contiguous land,'' and ''written agreement'' in section 1.

(d) In sections 3(b) (1) and (2) remove the words ''actuarial 1 table'' and add in their place the words ''actuarial documents'' and remove the words ''actuarial table'' and add in their place, the words ''actuarial documents and'' in section 7(a).

(e) Revise section 2 to read as follows:

* * * * *

2. Unit Division

(a) A basic unit, as defined in section 1 of the Basic Provisions, will be divided into additional basic units by each citrus crop designated in the Special Provisions.

(b) Sections 34(a) (1), (3), and (4) of the Basic Provisions are not applicable.

(c) Provisions in the Basic Provisions that allow optional units by irrigated and non-irrigated practices are not applicable.

(d) Instead of establishing optional units by section, section equivalent, or FSA farm serial number optional units may be established if each optional unit is located on non-contiguous land.

* * * * *

(f) Revise section 13 to read as follows:

* * * * *

13. Late and prevented planting

The late and prevented planting provisions of the Basic Provisions are not applicable.

10. Amend § 457.107 as follows:

(a) Revise the introductory text to read as follows:

**§ 457.107 Florida citrus fruit crop insurance provisions.**

The Florida citrus fruit crop insurance provisions for the 1999 and succeeding crop years are as follows:

* * * * *

(b) Revise the paragraph preceding section 1 to read as follows:

* * * * *

If a conflict exists among the policy provisions, the order of priority is as follows: (1) The Catastrophic Risk Protection Endorsement, if applicable; (2) the Special Provisions; (3) these Crop Provisions; and (4) the Basic Provisions with (1) controlling (2), etc.

* * * * *

(c) Remove the definitions of ''days,'' ''FSA,'' ''non-contiguous land,'' and ''written agreement'' in section 1.

(d) Remove the words ''Actuarial Table'' and add in their place, the words ''actuarial documents'' in the following places:

i. Section 1, definition of ''amount of insurance;'' and

ii. Section 6(a).

(e) Revise section 2 to read as follows:

* * * * *

2. Unit Division

(a) A basic unit, as defined in section 1 of the Basic Provisions, will be divided into additional basic units by each citrus crop designated in the Special Provisions.

(b) Provisions in the Basic Provisions that allow optional units by irrigated and non-irrigated practices are not applicable.

(c) Instead of establishing optional units by section, section equivalent, or FSA farm serial number, optional units may be established if each optional unit is located on non-contiguous land.

* * * * *

(f) Revise section 6(d) to change the section reference therein from ''6(f)'' to ''6.''

(g) Revise section 11 to read as follows:

* * * * *

11. Late and prevented planting

The late and prevented planting provisions of the Basic Provisions are not applicable.

11. Amend § 457.108 as follows:

(a) Revise the introductory text to read as follows:

**§ 457.108 Sunflower seed crop insurance provisions.**

The sunflower seed crop insurance provisions for the 1998 and succeeding crop years are as follows:

* * * * *

(b) Revise the paragraph preceding section 1 to read as follows:

* * * * *

If a conflict exists among the policy provisions, the order of priority is as follows: (1) The Catastrophic Risk Protection Endorsement, if applicable; (2) the Special Provisions; (3) these Crop Provisions; and (4) the Basic Provisions with (1) controlling (2), etc.

* * * * *

(c) Remove alphabetic paragraph designations and the definitions of ''days,'' ''final planting date,'' ''good farming practices,'' ''interplanted,'' ''irrigated practice,'' ''late planted,'' ''late planting period,'' ''practical to replant,'' ''prevented planting,'' ''production guarantee,'' ''replanting,'' ''timely planted,'' and ''written agreement'' in section 1 and revise the definition of ''planted acreage'' to read as follows:

* * * * *

1. Definitions

* * * * *

*Planted acreage*—In addition to the definition contained in the Basic Provisions, sunflower seed must initially be planted in rows far enough apart to permit mechanical cultivation, unless otherwise provided by the Special Provisions, actuarial documents, or by written agreement.

* * * * *

(d) Remove section 2.

(e) Redesignate sections 3 through 13 as sections 2 through 12 respectively.

(f) Amend redesignated section 4 to change the section reference therein from ''2.(f)'' to ''2''.

(g) Remove the word ''subsection'' and add in its place the word ''section'' in redesignated section 4.

(h) Remove the words ''actuarial table'' and add in their place, the words ''actuarial documents'' in redesignated section 5, introductory text.

(i) Revise section 6(b) to read as follows:

* * * * *

6. Insurable Acreage

* * * * *

(a) * * *

(b) Any acreage of the insured crop damaged before the final planting date, to the extent that a majority of producers in the area would not normally further care for the crop, must be replanted unless we agree that it is not practical to replant.

(j) Revise section 9(a) to read as follows:

* * * * *

9. Replanting Payments

(a) In accordance with section 13 of the Basic Provisions, a replanting payment for sunflower seed is allowed if the sunflowers are damaged by an insurable cause of loss to the extent that the remaining stand will not produce at least 90 percent of the production guarantee for the acreage and it is practical to replant.

* * * * *

(k) Amend redesignated section 9(b) to change the section reference therein from ''10.(c)'' to ''9(c).''

(l) Remove the word ''subsection'' and add in its place the word ''section'' in redesignated section 9(b).

(m) Amend redesignated section 11(c)(1)(iii) to change the section reference therein from ''12.(d)'' to ''11(d)''.

(n) Amend redesignated section 11(d)(4) to change the section reference therein from ''12.(d)(2) and (3)'' to ''11(d) (2) and (3)''.

(o) Revise redesignated section 12 to read as follows:

* * * * *

12. Prevented Planting.

Your prevented planting coverage will be 60 percent of your production guarantee for timely planted acreage. If you have limited or additional levels of coverage, as specified in 7 CFR part 400, subpart T, and pay an additional premium, you may increase your prevented planting coverage to a level specified in the actuarial documents.

12. Amend § 457.109 as follows:

(a) Revise the introductory text to read as follows:

**§ 457.109 Sugar beet crop insurance provisions.**

The sugar beet crop insurance provisions for the 1998 and succeeding crop years in counties with a contract change date of November 30, and for the 1999 and succeeding crop years in counties with a contract change date of April 30, are as follows:

* * * * *

(b) Revise the paragraph preceding section 1 to read as follows:

* * * * *

If a conflict exists among the policy provisions, the order of priority is as follows: (1) The Catastrophic Risk Protection Endorsement, if applicable; (2) the Special Provisions; (3) these Crop Provisions; and (4) the Basic Provisions with (1) controlling (2), etc.

* * * * *

(c) Remove the definitions of ''days,'' ''FSA,'' ''final planting date,'' ''good farming practices,'' ''interplanted,'' ''irrigated practice,'' ''late planted,'' ''late planting period,'' ''prevented planting,'' ''replanting,'' ''timely planted,'' and ''written agreement'' in section 1 and revise the definition of ''planted acreage'' to read as follows:

* * * * *

1. Definitions

* * * * *

*Planted acreage*—In addition to the definition contained in the Basic Provisions, sugar beets must initially be planted in rows, unless otherwise provided by the Special Provisions, actuarial documents, or by written agreement.

* * * * *

(d) Revise section 2 to read as follows:

* * * * *

2. Unit Division

In addition to the requirements of section 34 of the Basic Provisions, basic units may be divided into optional units only if you have a sugar beet processor contract that requires the processor to accept all production from a number of acres specified in the sugar beet processor contract. Acreage insured to fulfill a sugar beet processor contract which provides that the processor will accept a designated amount of production or a combination of acreage and production will not be eligible for optional units.

* * * * *

(e) Remove the words ''actuarial table'' and add in their place, the words ''actuarial documents'' in redesignated section 7(a).

* * * * *

(f) Revise section 14 to read as follows:

* * * * *

14. Late Planting

The late planting provisions contained in section 16 of the Basic Provisions are not applicable in California counties with a July 15 cancellation date.

* * * * *

(g) Revise section 15 to read as follows:

* * * * *

15. Prevented Planting

(a) The prevented planting provisions contained in section 17 of the Basic Provisions are not applicable in California counties with a July 15 cancellation date.

(b) Except in those counties indicated in section 15(a), your prevented planting coverage will be 45 percent of your production guarantee for timely planted acreage. If you have limited or additional levels of coverage, as specified in 7 CFR part 400, subpart T, and pay an additional premium, you may increase your prevented planting coverage to a level specified in the actuarial documents.

13. Amend § 457.110 as follows:

(a) Revise the introductory text to read as follows:

**§ 457.110 Fig crop insurance provisions.**

The fig crop insurance provisions for the 1999 and succeeding crop years are as follows:

* * * * *

(b) Revise the paragraph preceding section 1 to read as follows:

* * * * *

If a conflict exists among the policy provisions, the order of priority is as follows: (1) the Catastrophic Risk Protection Endorsement, if applicable; (2) the Special Provisions; (3) these Crop Provisions; and (4) the Basic Provisions with (1) controlling (2), etc.

* * * * *

(c) Remove alphabetic paragraph designations and the definitions of ''good farming practices,'' ''irrigated practice,'' ''non-contiguous land,'' and ''production guarantee'' in section 1.

(d) Remove the words ''Common Crop Insurance Policy'' and add in their place, the words ''Basic Provisions'' in the following places:

i. Section 3;

ii. Section 4 ;

iii. Section 8, introductory text; and

iv. Sections 9 (a) and (b).

(e) Revise section 2 to read as follows:

* * * * *

2. Unit Division

(a) A basic unit, as defined in section 1 of the Basic Provisions, will be divided into additional basic units by each fig type designated in the Special Provisions.

(b) Provisions in the Basic Provisions that allow optional units by section, section equivalent, or FSA farm serial number and by irrigated and non-irrigated practices are not applicable. Optional units may be established only if each optional unit is located on non-contiguous land, unless otherwise allowed by written agreement.

(f) Remove the words ''actuarial table'' and add in their place, the words ''actuarial documents'' in section 7, introductory text.

(g) Add a section 11 to read as follows:

* * * * *

11. Late and Prevented Planting

The late and prevented planting provisions of the Basic Provisions are not applicable.

14. Amend § 457.111 as follows:

(a) Revise the introductory text to read as follows:

**§ 457.111 Pear crop insurance provisions.**

The pear crop insurance provisions for the 1999 and succeeding crop years are as follows:

* * * * *

(b) Revise the paragraph preceding section 1 to read as follows:

* * * * *

If a conflict exists among the policy provisions, the order of priority is as follows:

(1) the Catastrophic Risk Protection Endorsement, if applicable; (2) the Special Provisions; (3) these Crop Provisions; and (4) the Basic Provisions with (1) controlling (2), etc.

* * * * *

(c) Remove the definitions of ''days,'' ''FSA,'' ''good farming practices,'' ''irrigated practice,'' ''non-contiguous,'' ''production guarantee (per acre),'' and ''written agreement'' in section 1.

(d) Revise section 2 to read as follows:

* * * * *

2. Unit Division

(a) Provisions in the Basic Provisions that allow optional units by irrigated and non-irrigated practices are not applicable.

(b) Instead of establishing optional units by section, section equivalent, or FSA farm serial number optional units may be established if each optional unit is located on non-contiguous land.

(c) In addition to, or instead of, establishing optional units by section, section equivalent, FSA farm serial number, or on non-contiguous land, optional units may be established by varietal group when provided for in the Special Provisions. The requirements of section 34(a)(1) of the Basic Provisions are not applicable for this method of unit division.

(e) Remove the words ''actuarial table'' and add in their place, the words ''actuarial documents'' in the following places:

i. Section 6, introductory text; and

ii. Sections 13(a)(1) and (3).

(f) Remove the word ''designates'' and add in its place, the word ''designate'' in section 13(a)(1).

(g) Revise section 12 to read as follows:

12. Late and Prevented Planting

The late and prevented planting provisions of the Basic Provisions are not applicable.

* * * * *

15. Amend § 457.113 as follows:

(a) Revise the introductory text to read as follows:

**§ 457.113 Coarse grains crop insurance provisions.**

The coarse grains crop insurance provisions for the 1998 and succeeding crop years are as follows:

* * * * *

(b) Revise the paragraph preceding section 1 to read as follows:

* * * * *

If a conflict exists among the policy provisions, the order of priority is as follows: (1) the Catastrophic Risk Protection Endorsement, if applicable; (2) the Special Provisions; (3) these Crop Provisions; and (4) the Basic Provisions with (1) controlling (2), etc.

* * * * *

(c) Remove alphabetic paragraph designations and the definitions of ''days,'' ''final planting date,'' ''good farming practices,'' ''interplanted,'' ''irrigated practice,'' ''late planted,'' ''late planting period,'' ''practical to replant,'' ''prevented planting,'' ''replanting,'' ''timely planted,'' and ''written agreement'' in section 1 and revise the definitions of ''planted acreage'' and ''production guarantee'' to read as follows:

* * * * *

1. Definitions

* * * * *

*Planted acreage*—In addition to the definition contained in the Basic Provisions, coarse grains must initially be planted in rows (corn must be planted in rows far enough apart to permit mechanical cultivation), unless otherwise provided by the Special Provisions, actuarial documents, or by written agreement.

*Production guarantee (per acre)*—In lieu of the definition contained in the Basic Provisions, the number of bushels (tons for corn insured as silage) determined by multiplying the approved actual production history (APH) yield per acre, calculated in accordance with 7 CFR part 400, subpart G, by the coverage level percentage you elect.

* * * * *

(d) Remove the words ''Common Crop Insurance Policy'' and add in their place, the words ''Basic Provisions'' in the following places:

i. Section 3(a);

ii. Section 4;

iii. Section 5;

iv. Section 6(a);

v. Section 7;

vi. Section 8, introductory text;

vii. Section 9, introductory text;

viii. Section 10(a); and

ix. Sections 11(a), (b)(1) and (2).

* * * * *

(e) Remove section 2.

(f) Redesignate sections 3 through 13 as sections 2 through 12 respectively.

(g) Remove the words ''actuarial table'' and add in their place, the words ''actuarial documents'' in redesignated sections 5(a) and (c).

(h) Remove the word ''provides'' and add in its place, the word ''provide'' in redesignated section 5(c).

(i) Amend redesignated section 4 to change the section reference therein from 2(f) to 2.

(j) Remove the word ''subsection'' and add in its place the word ''section'' in redesignated section 4.

(k) Amend redesignated section 5(a)(3)(i) to change the section reference therein from ''6(b)(1)'' to ''5(b)(1)''.

(l) Amend redesignated section 5(b) to change the section reference therein from ''6(a)'' to ''5(a)''.

(m) Amend redesignated section 5(b)(1) to change the section reference therein from ''6(c)'' to ''5(c)''.

(n) Amend redesignated sections 5(d) and (e) to change the section references therein from ''6(a)'' to ''5(a)''.

(o) Revise redesignated section 6 to read as follows:

* * * * *

6. Insurable Acreage

In addition to the provisions of section 9 of the Basic Provisions, any acreage of the insured crop damaged before the final planting date, to the extent that a majority of producers in the area would not normally further care for the crop, must be replanted unless we agree that it is not practical to replant.

(p) Revise redesignated section 9(a) to read as follows:

* * * * *

9. Replanting Payments

(a) In accordance with section 13 of the Basic Provisions, replanting payments for coarse grains are allowed if the coarse grains are damaged by an insurable cause of loss to the extent that the remaining stand will not produce at least 90 percent of the production guarantee for the acreage and it is practical to replant.

* * * * *

(q) Amend redesignated section 9(b) to change the section references therein from ''10(c)'' to ''9(c)''.

(r) Amend redesignated sections 11(b)(2)(iv) and (11)(c) to change the section references therein from ''12(d)'' to ''11(d)''.

(s) Amend redesignated section 11(b)(2)(iv) to change the section reference therein from ''section 3'' to ''section 2''.

(t) Amend redesignated section 11(c)(1)(iii) to change the section reference therein from ''12(e)'' to ''11(e)''.

(u) Amend redesignated section 11(d)(2) to change the section reference therein from ''12(c)(1)'' to ''11(c)(1)''.

(v) Amend redesignated section 11(e) to change the section reference therein from ''12(f)'' to ''11(f)''.

(w) Amend redesignated section 11(e)(4) to change the section reference therein from ''12(e)(2) and (3)'' to ''11(e)(2) and (3)''.

(x) Revise redesignated section 12 to read as follows:

* * * * *

12. Prevented Planting

Your prevented planting coverage will be 60 percent of your production guarantee for timely planted acreage. If you have limited or additional levels of coverage, as specified in 7 CFR part 400, subpart T, and pay an additional premium, you may increase your prevented planting coverage to a level specified in the actuarial documents.

16. Amend § 457.114 as follows:

(a) Amend the introductory text to read as follows:

**§ 457.114 Nursery crop insurance provisions.**

The nursery crop insurance provisions for the 1999 and succeeding crop years are as follows:

* * * * *

(b) Revise the paragraph preceding section 1 to read as follows:

* * * * *

If a conflict exists among the policy provisions, the order of priority is as follows: (1) The Catastrophic Risk Protection Endorsement, if applicable; (2) the Special Provisions; (3) these Crop Provisions; and (4) the Basic Provisions with (1) controlling (2), etc.

* * * * *

(c) Remove alphabetic paragraph designations and the definition of ''written agreement'' in section 1 and revise the definition of ''irrigated practice'' to read as follows:

1. Definitions

* * * * *

*Irrigated practice*—In lieu of the definition contained in the Basic Provisions, a method of producing a crop by which water is artificially applied during the growing season by appropriate systems and at the proper times, with the intention of providing the quantity of water needed to maintain the amount of insurance on the nursery plant inventory.

* * * * *

(d) Revise section 2 to read as follows:

* * * * *

2. Unit Division

In lieu of the definition of ''basic unit'' and section 34 of the Basic Provisions, a unit consists of all growing locations in the county within a five mile radius of the named insured locations designated on your nursery plant inventory summary. Any growing location more than five miles from any other growing location, but within the county, may be designated as a separate basic unit or be included in the closest unit listed on your nursery plant inventory summary.

(e) Remove the words ''actuarial table'' and add in their place, the words ''actuarial documents'' in section 8, introductory text.

(f) Add section 13 to read as follows:

* * * * *

13. Late and Prevented Planting

The late and prevented planting provisions of the Basic Provisions are not applicable.

17. Amend § 457.116 as follows:

(a) Revise the introductory text to read as follows:

**§ 457.116 Sugarcane crop insurance provisions.**

The sugarcane crop insurance provisions for the 1999 and succeeding crop years are as follows:

* * * * *

(b) Revise the paragraph preceding section 1 to read as follows:

* * * * *

If a conflict exists among the policy provisions, the order of priority is as follows: (1) The Catastrophic Risk Protection Endorsement, if applicable; (2) the Special Provisions; (3) these Crop Provisions; and (4) the Basic Provisions with (1) controlling (2), etc.

* * * * *

(c) Remove alphabetic paragraph designations and the definitions of ''CFSA,'' ''good farming practices,'' ''interplanted,'' ''irrigated practice,'' ''production guarantee,'' and ''written agreement'' in section 1.

(d) Remove section 2.

(e) Redesignate sections 3 through 11 as sections 2 through 10 respectively.

(f) Amend redesignated section 4 to change the section reference therein from ''2.(f)'' to ''2''.

(g) Remove the word ''subsection'' and add in its place, the word ''section'' in redesignated section 4.

(h) Remove the words ''actuarial table'' and add in their place, the words ''actuarial documents'' in redesignated section 5, introductory text.

(i) Amend redesignated section 7(a)(2) to change the section reference therein from ''8(a)(3)'' to ''7(a)(3)''.

(j) Amend redesignated section 10(c)(1)(v) to change the section reference therein from ''10(a)(2)'' to ''9(a)(2)''.

(k) Add a section 11 to read as follows:

* * * * *

11. Late and Prevented Planting

The late and prevented planting provisions of the Basic Provisions are not applicable.

18. Amend § 457.117 as follows:

(a) Revise the introductory text to read as follows:

**§ 457.117 Forage production crop insurance provisions.**

The forage production crop insurance provisions for the 1999 and succeeding crop years are as follows:

* * * * *

(b) Revise the paragraph preceding section 1 to read as follows:

* * * * *

If a conflict exists among the policy provisions, the order of priority is as follows: (1) The Catastrophic Risk Protection Endorsement, if applicable; (2) the Special Provisions; (3) these Crop Provisions; and (4) the Basic Provisions with (1) controlling (2), etc.

* * * * *

(c) Remove the definitions of ''days,'' ''good farming practices,'' ''irrigated practice,'' ''production guarantee (per acre),'' and ''written agreement'' in section 1.

(d) Remove the words ''actuarial table'' and add in their place, the words ''actuarial documents'' in the following places:

i. Section 1, definition of ''forage;'' and

ii. Section 7(a).

(e) Revise section 2 to read as follows:

* * * * *

2. Unit Division

The optional unit provisions in section 34 of the Basic Provisions are not applicable. Optional units are not allowed.

* * * * *

(f) Revise section 12 to read as follows:

* * * * *

12. Late and Prevented Planting

The late and prevented planting provisions of the Basic Provisions are not applicable.

19. Amend § 457.119 as follows:

(a) Revise the introductory text to read as follows:

**§ 457.119 Texas citrus fruit crop insurance provisions.**

The Texas citrus fruit crop insurance provisions for the 2000 and succeeding crop years are as follows:

* * * * *

(b) Revise the paragraph preceding section 1 to read as follows:

* * * * *

If a conflict exists among the policy provisions, the order of priority is as follows: (1) The Catastrophic Risk Protection Endorsement, if applicable; (2) the Special Provisions; (3) these Crop Provisions; and (4) the Basic Provisions with (1) controlling (2), etc.

* * * * *

(c) Remove the definitions of ''days,'' ''FSA,'' ''good farming practices,'' ''irrigated practice,'' ''non-contiguous land'' and ''written agreement'' in section 1.

(d) Revise section 2 to read as follows:

* * * * *

2. Unit Division

(a) A basic unit, as defined in section 1 of the Basic Provisions, will be divided into additional basic units by each citrus crop designated in the Special Provisions.

(b) Provisions in the Basic Provisions that allow optional units by irrigated and non-irrigated practices are not applicable.

(c) Instead of establishing optional units by section, section equivalent, or FSA farm serial number, optional units may be established if each optional unit is located on non-contiguous land.

* * * * *

(e) Remove the words ''actuarial table'' and add in their place, the words ''actuarial documents'' in the following places:

i. Section 7, introductory text; and

ii. Section 12(e).

(f) Remove the word ''provides'' and add in its place, the word ''provide'' in section 12(e).

(g) Revise section 13 to read as follows:

* * * * *

13. Late and Prevented Planting

The late and prevented planting provisions of the Basic Provisions are not applicable.

20. Amend § 457.121 as follows:

(a) Revise the introductory text to read as follows:

**§ 457.121 Arizona-California citrus crop insurance provisions.**

The Arizona-California citrus crop insurance provisions for the 2000 and succeeding crop years are as follows:

* * * * *

(b) Revise the paragraph preceding section 1 to read as follows:

* * * * *

If a conflict exists among the policy provisions, the order of priority is as follows: (1) The Catastrophic Risk Protection Endorsement, if applicable; (2) the Special Provisions; (3) these Crop Provisions; and (4) the Basic Provisions with (1) controlling (2), etc.

* * * * *

(c) Remove the definitions of ''days,'' ''good farming practices,'' ''irrigated practice,'' ''non-contiguous land,'' ''production guarantee (per acre),'' and ''written agreement'' in section 1.

(d) Revise section 2 to read as follows:

* * * * *

2. Unit Division

(a) A basic unit, as defined in section 1 of the Basic Provisions, will also be divided into additional basic units by each citrus crop designated in the Special Provisions.

(b) Provisions in the Basic Provisions that allow optional units by section, section equivalent, or FSA farm serial number and by irrigated and non-irrigated practices are not applicable. Optional units may be established only if each optional unit is located on non-contiguous land, unless otherwise allowed by written agreement.

* * * * *

(e) Remove the words ''actuarial table'' and add in their place, the words ''actuarial documents'' in section 6, introductory text.

(f) Revise section 12 to read as follows:

* * * * *

12. Late and Prevented Planting

The late and prevented planting provisions of the Basic Provisions are not applicable.

21. Amend § 457.122 as follows:

(a) Revise the introductory text to read as follows:

**§ 457.122 Walnut crop insurance provisions.**

The walnut crop insurance provisions for the 1999 and succeeding crop years are as follows:

* * * * *

(b) Revise the paragraph preceding section 1 to read as follows:

* * * * *

If a conflict exists among the policy provisions, the order of priority is as follows: (1) The Catastrophic Risk Protection Endorsement, if applicable; (2) the Special Provisions; (3) these Crop Provisions; and (4) the Basic Provisions with (1) controlling (2), etc.

* * * * *

(c) Remove the definitions of ''days,'' ''good farming practices,'' ''irrigated practice,'' ''non-contiguous land,'' and ''written agreement'' in section 1.

(d) Revise section 2 to read as follows:

* * * * *

2. Unit Division

Provisions in the Basic Provisions that allow optional units by section, section equivalent, or FSA farm serial number and by irrigated and non-irrigated practices are not applicable. Optional units may be established only if each optional unit is located on non-contiguous land, unless otherwise allowed by written agreement.

* * * * *

(e) Remove the words ''actuarial table'' and add in their place, the words ''actuarial documents'' in section 6, introductory text.

(f) Revise section 12 to read as follows:

* * * * *

12. Late and Prevented Planting

The late and prevented planting provisions of the Basic Provisions are not applicable.

22. Amend § 457.123 as follows:

(a) Revise the introductory text to read as follows:

**§ 457.123 Almond crop insurance provisions.**

The almond crop insurance provisions for the 1999 and succeeding crop years are as follows:

* * * * *

(b) Revise the paragraph preceding section 1 to read as follows:

* * * * *

If a conflict exists among the policy provisions, the order of priority is as follows: (1) The Catastrophic Risk Protection Endorsement, if applicable; (2) the Special Provisions; (3) these Crop Provisions; and (4) the Basic Provisions with (1) controlling (2), etc.

* * * * *

(c) Remove the definitions of ''days,'' ''good farming practices,'' ''irrigated practice,'' ''non-contiguous land,'' and ''written agreement'' in section 1.

(d) Revise section 2 to read as follows:

* * * * *

2. Unit Division

Provisions in the Basic Provisions that allow optional units by section, section equivalent, or FSA farm serial number and by irrigated and non-irrigated practices are not applicable. Optional units may be established only if each optional unit is located on non-contiguous land, unless otherwise allowed by written agreement.

* * * * *

(e) Remove the words ''actuarial table'' and add in their place, the words ''actuarial documents'' in section 6, introductory text.

(f) Revise section 12 to read as follows:

* * * * *

12. Late and Prevented Planting

The late and prevented planting provisions of the Basic Provisions are not applicable.

23. Amend § 457.124 as follows:

(a) Revise the introductory text to read as follows:

**§ 457.124 Raisin crop insurance provisions.**

The raisin crop insurance provisions for the 1998 and succeeding crop years are as follows:

* * * * *

(b) Revise the paragraph preceding section 1 to read as follows:

* * * * *

If a conflict exists among the policy provisions, the order of priority is as follows: (1) The Catastrophic Risk Protection Endorsement, if applicable; (2) the Special Provisions; (3) these Crop Provisions; and (4) the Basic Provisions with (1) controlling (2), etc.

* * * * *

(c) Remove the definitions of ''days,'' ''non-contiguous land,'' and ''written agreement'' in section 1.

(d) Remove the words ''actuarial table'' and add in their place, the words ''actuarial documents'' in the following places:

i. Section 1, definitions of ''raisins'' and ''reference maximum dollar amount;'' and

ii. Section 8(a).

(e) Revise section 2 to read as follows:

2. Unit Division

(a) A basic unit, as defined in section 1 of the Basic Provisions, will be divided into additional basic units by grape variety.

(b) Provisions in the Basic Provisions that allow optional units by section, section equivalent, or FSA farm serial number and by irrigated and non-irrigated practices are not applicable. Optional units may be established only if each optional unit is located on non-contiguous land, unless otherwise allowed by written agreement.

* * * * *

(f) Revise section 14 to read as follows:

14. Late and Prevented Planting

The late and prevented planting provisions of the Basic Provisions are not applicable.

24. Amend § 457.125 as follows:

(a) Revise the introductory text to read as follows:

**§ 457.125 Safflower crop insurance provisions.**

The safflower crop insurance provisions for the 1998 and succeeding crop years in counties with a contract change date of December 31, and for the 1999 and succeeding crop years in counties with a contract change date of August 31 are as follows:

* * * * *

(b) Revise the paragraph preceding section 1 to read as follows:

* * * * *

If a conflict exists among the policy provisions, the order of priority is as follows: (1) The Catastrophic Risk Protection Endorsement, if applicable; (2) the Special Provisions; (3) these Crop Provisions; and (4) the Basic Provisions with (1) controlling (2), etc.

* * * * *

(c) Remove the definitions of ''days,'' ''FSA,'' ''final planting date,'' ''good farming practices,'' ''interplanted,'' ''irrigated practice,'' ''practical to replant,'' ''production guarantee (per acre),'' ''replanting,'' and ''written agreement'' in section 1 and revise the definition of ''planted acreage'' to read as follows:

* * * * *

1. Definitions

* * * * *

*Planted acreage*—In addition to the definition contained in the Basic Provisions, safflowers must initially be planted in rows, unless otherwise provided by the Special Provisions, actuarial documents, or by written agreement.

* * * * *

(d) Remove section 2.

(e) Redesignate sections 3 through 13 (erroneously published as 3) as sections 2 through 12 respectively.

(f) Remove the words ''actuarial table'' and add in their place, the words ''actuarial documents'' in Section 5, introductory text.

(g) Amend redesignated section 11(b)(2) to change the section reference therein from ''12(b)(1)'' to ''11(b)(1)''.

(h) Amend redesignated section 11(b)(3) to change the section reference therein from ''12(b)(2)'' to ''11(b)(2)''.

(i) Amend redesignated section 11(b)(4) to change the section reference therein from ''12(c)'' to ''11(c)''.

(j) Amend redesignated section 11(b)(5) to change the section reference therein from ''12(b)(4)'' to ''11(b)(4)''.

(k) Amend redesignated section 11(b)(6) to change the section references therein from ''12(b)(5)'' to ''11(b)(5)'' and ''12(b)(3)'' to ''11(b)(3)''.

(l) Amend redesignated section 11(b)(7) to change the section reference therein from ''12(b)(6)'' to ''11(b)(6)''.

(m) Amend redesignated section 11(c)(1)(iii) to change the section reference therein from ''section 12(d)'' to ''section 11(d)''.

(n) Amend redesignated section 11(d)(4) to change the section reference therein from ''12(d)(2) and (3)'' to ''11(d)(2) and (3)''.

(o) Revise redesignated section 12 to read as follows:

* * * * *

12. Prevented Planting

Your prevented planting coverage will be 60 percent of your production guarantee for timely planted acreage. If you have limited or additional levels of coverage, as specified in 7 CFR part 400, subpart T, and pay an additional premium, you may increase your prevented planting coverage to a level specified in the actuarial documents.

* * * * *

25. Amend § 457.128 as follows:

(a) Revise the paragraph preceding section 1 to read as follows:

**§ 457.128 Guaranteed production plan of fresh market tomato crop insurance provisions.**

* * * * *

If a conflict exists among the policy provisions, the order of priority is as follows: (1) The Catastrophic Risk Protection Endorsement, if applicable; (2) the Special Provisions; (3) these Crop Provisions; and (4) the Basic Provisions with (1) controlling (2), etc.

* * * * *

(b) Remove the definitions of ''days,'' ''FSA,'' ''good farming practices,'' ''irrigated practice,'' ''production guarantee (per acre),'' ''replanting,'' and ''written agreement'' in section 1.

(c) Revise section 2 to read as follows:

* * * * *

2. Unit Division

(a) A basic unit, as defined in section 1 of the Basic Provisions, will be divided into additional basic units by planting period, if separate planting periods are provided for in the Special Provisions.

(b) Provisions in the Basic Provisions that allow optional units by irrigated and non-irrigated practices are not applicable.

* * * * *

(d) Remove the words ''actuarial table'' and add in their place, the words ''actuarial documents'' in section 8, introductory text.

(e) Revise section 14 to read as follows:

* * * * *

14. Late and Prevented Planting

The late and prevented planting provisions of the Basic Provisions are not applicable.

* * * * *

26. Amend § 457.129 as follows:

(a) Revise the introductory text to read as follows:

**§ 457.129 Fresh market sweet corn crop insurance provisions.**

The fresh market sweet corn crop insurance provisions for the 1999 and succeeding crop years are as follows:

* * * * *

(b) Revise the paragraph preceding section 1 to read as follows:

* * * * *

If a conflict exists among the policy provisions, the order of priority is as follows: (1) The Catastrophic Risk Protection Endorsement, if applicable; (2) the Special Provisions; (3) these Crop Provisions; and (4) the Basic Provisions with (1) controlling (2), etc.

* * * * *

(c) Remove the definitions of ''days,'' ''FSA,'' ''good farming practices,'' ''interplanted,'' ''irrigated practice,'' ''replanting,'' and ''written agreement'' in section 1 and revise the definition of ''planted acreage'' to read as follows:

* * * * *

1. Definitions

* * * * *

*Planted acreage*—In addition to the definition contained in the Basic Provisions, for each planting period, sweet corn seed must be planted in rows far enough apart to permit mechanical cultivation, unless otherwise provided by the Special Provisions, actuarial documents, or by written agreement.

* * * * *

(d) Remove the words ''Actuarial Table'' and add in their place, the words ''actuarial documents'' in the following places:

i. Section 1, definition of ''planting period;''

ii. Section 3(a);

iii. Section 7;

iv. Section 8, introductory text and paragraph (b)(2); and

v. Section 16(a)(1).

(e) Revise section 2 to read as follows:

* * * * *

2. Unit Division

(a) A basic unit, as defined in section 1 of the Basic Provisions, will also be divided into additional basic units by planting period.

(b) Provisions in the Basic Provisions that allow optional units by irrigated and non-irrigated practices are not applicable.

* * * * *

(f) Revise section 15 to read as follows:

* * * * *

15. Late and Prevented Planting

The late and prevented planting provisions of the Basic Provisions are not applicable.

27. Amend § 457.130 as follows:

(a) Revise the introductory text to read as follows:

**§ 457.130 Macadamia tree crop insurance provisions.**

The macadamia tree crop insurance provisions for the 1999 and succeeding crop years are as follows:

* * * * *

(b) Revise the paragraph preceding section 1 to read as follows:

* * * * *

If a conflict exists among the policy provisions, the order of priority is as follows: (1) The Catastrophic Risk Protection Endorsement, if applicable; (2) the Special Provisions; (3) these Crop Provisions; and (4) the Basic Provisions with (1) controlling (2), etc.

* * * * *

(c) Remove the definitions of ''days,'' ''non-contiguous,'' and ''written agreement'' in section 1.

(d) Revise section 2 to read as follows:

* * * * *

2. Unit Division

(a) Sections 34(a) (1), (3) and (4) of the Basic Provisions are not applicable.

(b) Provisions in the Basic Provisions that allow optional units by section, section equivalent, or FSA farm serial number and by irrigated and non-irrigated practices are not applicable. Unless otherwise allowed by written agreement, optional units may be established only if each optional unit:

(1) Contains at least 80 acres of insurable age macadamia trees; or

(2) Is located on non-contiguous land.

(c) You must have provided records, which can be independently verified, of acreage and age of trees for each unit for at least the last crop year.

* * * * *

(e) Remove the words ''actuarial table'' and add in their place, the words ''actuarial documents and'' in the following places:

i. Section 3(a)(1); and

ii. Section 6, introductory text.

(f) Revise section 12 to read as follows:

12. Late and Prevented Planting

The late and prevented planting provisions of the Basic Provisions are not applicable.

28. Amend § 457.131 as follows:

(a) Revise the introductory text to read as follows:

**§ 457.131 Macadamia nut crop insurance provisions.**

The macadamia nut crop insurance provisions for the 2000 and succeeding crop years are as follows:

* * * * *

(b) Revise the paragraph preceding section 1 to read as follows:

* * * * *

If a conflict exists among the policy provisions, the order of priority is as follows: (1) The Catastrophic Risk Protection Endorsement, if applicable; (2) the Special Provisions; (3) these Crop Provisions; and (4) the Basic Provisions with (1) controlling (2), etc.

* * * * *

(c) Remove the definitions of ''days,'' ''good farming practices,'' ''irrigated practice,'' ''non-contiguous,'' and ''written agreement'' in section 1.

(d) Revise section 2 to read as follows:

* * * * *

2. Unit Division

(a) Section 34(a)(1) of the Basic Provisions is not applicable.

(b) Provisions in the Basic Provisions that allow optional units by section, section equivalent, or FSA farm serial number and by irrigated and non-irrigated practices are not applicable. Unless otherwise allowed by written agreement, optional units may be established only if each optional unit:

(1) Contains at least 80 acres of bearing macadamia trees; or

(2) Is located on non-contiguous land.

* * * * *

(e) Remove the words ''actuarial table'' and add in their place, the words ''actuarial documents'' in section 6, introductory text.

(f) Revise section 12 to read as follows:

* * * * *

12. Late and Prevented Planting

The late and prevented planting provisions of the Basic Provisions are not applicable.

* * * * *

29. Amend § 457.132 as follows:

(a) Revise the introductory text to read as follows:

**§ 457.132 Cranberry crop insurance provisions.**

The cranberry crop insurance provisions for the 1999 and succeeding crop years are as follows:

* * * * *

(b) Revise the paragraph preceding section 1 to read as follows:

* * * * *

If a conflict exists among the policy provisions, the order of priority is as follows: (1) The Catastrophic Risk Protection Endorsement, if applicable; (2) the Special Provisions; (3) these Crop Provisions; and (4) the Basic Provisions with (1) controlling (2), etc.

* * * * *

(c) Remove the definitions of ''days,'' ''good farming practices,'' ''irrigated practice,'' ''non-contiguous land,'' ''production guarantee (per acre),'' and ''written agreement'' in section 1.

(d) Revise section 2 to read as follows:

* * * * *

2. Unit Division

Provisions in the Basic Provisions that allow optional units by section, section equivalent, or FSA farm serial number and by irrigated and non-irrigated practices are not applicable. Optional units may be established only if each optional unit is located on non-contiguous land, unless otherwise allowed by written agreement.

* * * * *

(e) Remove the words ''actuarial table'' and add in their place, the words ''actuarial documents'' in section 6, introductory text and paragraph (d).

(f) Revise section 11 to read as follows:

* * * * *

11. Late and Prevented Planting

The late and prevented planting provisions of the Basic Provisions are not applicable.

30. Amend § 457.133 as follows:

(a) Revise the introductory text to read as follows:

**§ 457.133 Prune crop insurance provisions.**

The prune crop insurance provisions for the 1999 and succeeding crop years are as follows:

* * * * *

(b) Revise the paragraph preceding section 1 to read as follows:

* * * * *

If a conflict exists among the policy provisions, the order of priority is as follows: (1) The Catastrophic Risk Protection Endorsement, if applicable; (2) the Special Provisions; (3) these Crop Provisions; and (4) the Basic Provisions with (1) controlling (2), etc.

* * * * *

(c) Remove the definitions of ''days,'' ''FSA,'' ''good farming practices,'' ''irrigated practice,'' ''non-contiguous land,'' ''production guarantee (per acre),'' and ''written agreement'' in section 1.

(d) Revise section 2 to read as follows:

* * * * *

2. Unit Division

Provisions in the Basic Provisions that allow optional units by irrigated and non-irrigated practices are not applicable. Instead of establishing optional units by section, section equivalent, or FSA farm serial number optional units may be established if each optional unit is located on non-contiguous land.

* * * * *

(e) Remove the words ''actuarial table'' and add in their place, the words

''actuarial documents'' in section 6, introductory text.

(f) Revise section 12 to read as follows:

* * * * *

12. Late and Prevented Planting

The late and prevented planting provisions of the Basic Provisions are not applicable.

31. Amend § 457.135 as follows:

(a) Revise the introductory text to read as follows:

**§ 457.135 Onion crop insurance provisions.**

The onion crop insurance provisions for the 1998 and succeeding crop years in counties with a contract change date of December 31, and for the 1999 and succeeding crop years in counties with a contract change date of June 30 are as follows:

* * * * *

(b) Revise the paragraph preceding section 1 to read as follows:

* * * * *

If a conflict exists among the policy provisions, the order of priority is as follows: (1) The Catastrophic Risk Protection Endorsement, if applicable; (2) the Special Provisions; (3) these Crop Provisions; and (4) the Basic Provisions with (1) controlling (2) etc.

* * * * *

(c) Remove the definitions of ''crop year,'' ''days,'' ''FSA,'' ''final planting date,'' ''good farming practices,'' ''interplanted,'' ''irrigated practice,'' ''late planted,'' ''late planting period,'' ''practical to replant,'' ''prevented planting,'' ''replanting,'' ''timely planted,'' and ''written agreement'' in section 1 and revise the definition of ''planted acreage'' to read as follows:

* * * * *

1. Definitions

* * * * *

*Planted acreage*—In addition to the definition contained in the Basic Provisions, onions must be planted in rows.

* * * * *

(d) Revise section 2 to read as follows:

* * * * *

2. Unit Division

(a) Provisions in the Basic Provisions that allow optional units by section, section equivalent, or FSA farm serial number are not applicable.

(b) In addition to, or instead of, establishing optional units by irrigated acreage or non-irrigated acreage, optional units may be established by type, if the specific type is designated in the Special Provisions.

* * * * *′

(e) Remove the words ''actuarial table'' and add in their place, the words ''actuarial documents'' in the following places:

i. Section 6; and

ii. Section 7, introductory text.

(f) Revise section 14 to read as follows:

* * * * *

14. Prevented Planting

Your prevented planting coverage will be 45 percent of your production guarantee for timely planted acreage. If you have limited or additional levels of coverage, as specified in 7 CFR part 400, subpart T, and pay an additional premium, you may increase your prevented planting coverage to a level specified in the actuarial documents.

(g) Remove section 15.

* * * * *

32. Amend § 457.137 as follows:

* * * * *

(a) Revise the paragraph preceding section 1 to read as follows:

**§ 457.137 Green pea crop insurance provisions.**

If a conflict exists among the policy provisions, the order of priority is as follows: (1) The Catastrophic Risk Protection Endorsement, if applicable; (2) the Special Provisions; (3) these Crop Provisions; and (4) the Basic Provisions with (1) controlling (2), etc.

* * * * *

(b) Remove the definitions of ''approved yield,'' ''days,'' ''FSA,'' ''final planting date,'' ''interplanted,'' ''irrigated practice,'' ''replanting,'' ''timely planted,'' and ''written agreement'' in section 1 and revise the definition of ''planted acreage'' to read as follows:

* * * * *

1. Definitions

* * * * *

*Planted acreage*—In addition to the definition contained in the Basic Provisions, peas must initially be placed in rows to be considered planted. Acreage planted in any other manner will not be insurable unless otherwise provided by the Special Provisions or by written agreement.

* * * * *

(c) Revise section 2 to read as follows:

* * * * *

2. Unit Division

(a) For any processor contract that stipulates the amount of production to be delivered:

(1) In lieu of the definition contained in the Basic Provisions, a basic unit will consist of all acreage planted to the insured crop in the county that will be used to fulfill contracts with each processor;

(i) There will be no more than one basic unit for all production contracted with each processor contract;

(ii) In accordance with section 12, all production from any basic unit in excess of the amount under contract will be included as production to count if such production is applied to any other basic unit for which the contracted amount has not been fulfilled; and

(2) Provisions in the Basic Provisions that allow optional units by section, section equivalent, or FSA farm serial number and by irrigated and non-irrigated practices are not applicable. Optional units may only be established based on shell type and pod type green peas if the shell type acreage does not continue into the pod type acreage in the same rows or planting pattern.

(b) For any processor contract that stipulates the number of acres to be planted, in addition to or instead of, establishing optional units by section, section equivalent or FSA farm serial number, or irrigated and non-irrigated acreage, optional units may be established based on shell type and pod type green peas if the shell type acreage does not continue into the pod type acreage in the same rows or planting pattern.

* * * * *

(d) Revise section 13 to read as follows:

* * * * *

13. Late Planting

A late planting period is not applicable to green peas unless allowed by the Special Provisions and you provide written approval from the processor by the acreage reporting date that it will accept the production from the late planted acres when it is expected to be ready for harvest.

* * * * *

(e) Revise section 14 to read as follows:

* * * * *

14. Prevented Planting

Your prevented planting coverage will be 40 percent of your production guarantee for timely planted acreage. If you have limited or additional levels of coverage, as specified in 7 CFR part 400, subpart T, and pay an additional premium, you may increase your prevented planting coverage to a level specified in the actuarial documents.

* * * * *

33. Amend § 457.138 as follows:

(a) Revise the introductory text to read as follows:

**§ 457.138 Grape crop insurance provisions.**

The grape crop insurance provisions for the 1999 and succeeding crop years are as follows:

* * * * *

(b) Revise the paragraph preceding section 1 to read as follows:

* * * * *

If a conflict exists among the policy provisions, the order of priority is as follows: (1) The Catastrophic Risk Protection Endorsement, if applicable; (2) the Special Provisions; (3) these Crop Provisions; and (4) the Basic Provisions with (1) controlling (2), etc.

* * * * *

(c) Remove the definitions of ''days,'' ''FSA,'' ''good farming practices,'' ''irrigated practice,'' ''non-contiguous,''

''production guarantee (per acre)'' ''USDA,'' and ''written agreement'' in section 1.

(d) Revise section 2 to read as follows:

* * * * *

2. Unit Division

(a) In California only, a basic unit, as defined in section 1 of the Basic Provisions will be divided into additional basic units by each variety that you insure.

(b) In California only, provisions in the Basic Provisions that provide for optional units by section, section equivalent, or FSA farm serial number and by irrigated and non-irrigated practices are not applicable. Optional units may be established only if each optional unit is located on non-contiguous land, unless otherwise allowed by written agreement.

(c) In all states except California, in addition to, or instead of, establishing optional units by section, section equivalent, or FSA farm serial number and by irrigated and non-irrigated acreage as provided in the unit division provisions contained in the Basic Provisions a separate optional unit may be established if each optional unit:

(1) Is located on non-contiguous land; or

(2) Consists of a separate varietal group when separate varietal groups are specified in the Special Provisions.

* * * * *

(e) Remove the words ''actuarial table'' and add in their place, the words ''actuarial documents'' in section 7, introductory text.

(f) Revise section 13 to read as follows:

13. Late and Prevented Planting

The late and prevented planting provisions of the Basic Provisions are not applicable.

34. Amend § 457.139 as follows:

(a) Revise the introductory text to read as follows:

**§ 457.139 Fresh market tomato (dollar plan) crop insurance provisions.**

The fresh market tomato (dollar plan) crop insurance provisions for the 1999 and succeeding crop years are as follows:

* * * * *

(b) Revise the paragraph preceding section 1 to read as follows:

* * * * *

If a conflict exists among the policy provisions, the order of priority is as follows: (1) The Catastrophic Risk Protection Endorsement, if applicable; (2) the Special Provisions; (3) these Crop Provisions; and (4) the Basic Provisions with (1) controlling (2), etc.

* * * * *

(c) Remove the definitions of ''days,'' ''FSA,'' ''good farming practices,'' ''interplanted,'' ''irrigated practice,'' ''replanting,'' and ''written agreement'' in section 1 and revise the definition of ''planted acreage'' to read as follows:

* * * * *

1. Definitions

* * * * *

*Planted acreage*—In addition to the definition contained in the Basic Provisions, for each planting period, tomato seed or transplants must initially be planted in rows, unless otherwise provided by Special Provisions, actuarial documents, or by written agreement.

* * * * *

(d) Remove the words ''Actuarial Table'' and add in their place, the words ''actuarial documents'' in the following places:

i. Section 1, definition of ''planting period;''

ii. Section 3(a);

iii. Section 7, introductory text;

iv. Section 8, introductory text and paragraph (b)(2); and

v. Section 16(a)(1).

(e) Revise section 2 to read as follows:

* * * * *

2. Unit Division

(a) A basic unit, as defined in section 1 of the Basic Provisions, will also be divided into additional basic units by planting period.

(b) Provisions in the Basic Provisions that allow optional units by irrigated and non-irrigated practices are not applicable.

* * * * *

(f) Revise section 15 to read as follows:

* * * * *

15. Late and Prevented Planting

The late and prevented planting provisions of the Basic Provisions are not applicable.

35. Amend § 457.141 as follows:

**§ 457.141 Rice crop insurance provisions.**

(a) Revise the paragraph preceding section 1 to read as follows:

If a conflict exists among the policy provisions, the order of priority is as follows: (1) The Catastrophic Risk Protection Endorsement, if applicable; (2) the Special Provisions; (3) these Crop Provisions; and (4) the Basic Provisions with (1) controlling (2), etc.

* * * * *

(b) Remove the definitions of ''days,'' ''FSA,'' ''final planting date,'' ''good farming practices,'' ''irrigated practice,'' ''late planted,'' ''late planting period,'' ''practical to replant,'' ''prevented planting,'' ''production guarantee (per acre),'' ''replanting,'' ''timely planted,'' and ''written agreement'' in section 1.

* * * * *

(c) Revise section 2 to read as follows:

* * * * *

2. Unit Division

Provisions in the Basic Provisions that allow optional units by irrigated and non-irrigated practices are not applicable.

* * * * *

(d) Remove the words ''actuarial table'' and add in their place, the words ''actuarial documents'' in section 6, introductory text.

(e) Revise section 13 to read as follows:

* * * * *

13. Prevented Planting

Your prevented planting coverage will be 45 percent of your production guarantee for timely planted acreage. If you have limited or additional levels of coverage, as specified in 7 CFR part 400, subpart T, and pay an additional premium, you may increase your prevented planting coverage to a level specified in the actuarial documents.

(f) Remove section 14.

36. Amend § 457.148 as follows:

(a) Revise the introductory text to read as follows:

**§ 457.148 Fresh market pepper crop insurance provisions.**

The fresh market pepper crop insurance provisions for the 1999 and succeeding crop years are as follows:

* * * * *

(b) Revise the paragraph preceding section 1 to read as follows:

* * * * *

If a conflict exists among the policy provisions, the order of priority is as follows: (1) The Catastrophic Risk Protection Endorsement, if applicable; (2) the Special Provisions; (3) these Crop Provisions; and (4) the Basic Provisions with (1) controlling (2), etc.

* * * * *

(c) Remove the definitions of ''days,'' ''FSA,'' ''good farming practices,'' ''interplanted,'' ''irrigated practice,'' ''replanting,'' and ''written agreement'' in section 1 and revise the definition of ''planted acreage'' to read as follows:

* * * * *

1. Definitions

* * * * *

*Planted acreage*—In addition to the definition contained in the Basic Provisions, for each planting period, pepper seed or transplants must initially be planted in rows, unless otherwise provided by the Special Provisions, actuarial documents, or by written agreement.

(d) Remove the words ''Actuarial Table'' and add in their place, the words ''actuarial documents'' in the following places:

i. Section 1, definition of ''planting period;''

ii. Section 3(a);

iii. Section 7;

iv. Section 8, introductory text and paragraph (b)(2); and

v. Section 16(a)(1).

(e) Revise section 2 to read as follows:

* * * * *

2. Unit Division

(a) A basic unit, as defined in section 1 of the Basic Provisions, will also be divided into additional basic units by planting period.

(b) Provisions in the Basic Provisions that allow optional units by irrigated and non-irrigated practices are not applicable.

* * * * *

(f) Revise section 15 to read as follows:

15. Late and Prevented Planting

The late and prevented planting provisions of the Basic Provisions are not applicable.

37. Amend § 457.149 as follows:

(a) Revise the introductory text to read as follows:

**§ 457.149 Table grape crop insurance provisions.**

The table grape crop insurance provisions for the 1999 and succeeding crop years are as follows:

* * * * *

(b) Revise the paragraph preceding section 1 to read as follows:

* * * * *

If a conflict exists among the policy provisions, the order of priority is as follows: (1) The Catastrophic Risk Protection Endorsement, if applicable; (2) the Special Provisions; (3) these Crop Provisions; and (4) the Basic Provisions with (1) controlling (2), etc.

* * * * *

(c) Remove the definitions of ''days,'' ''good farming practices,'' ''irrigated practice,'' ''non-contiguous,'' ''production guarantee (per acre),'' and ''written agreement'' in section 1.

(d) Revise section 2 to read as follows:

2. Unit Division

(a) A basic unit, as defined in section 1 of the Basic Provisions, will be divided into additional basic units by each table grape variety designated in the Special Provisions.

(b) Provisions in the Basic Provisions that allow optional units by section, section equivalent, or FSA farm serial number and by irrigated and non-irrigated practices are not applicable. Optional units may be established only if each optional unit is located on non-contiguous land, unless otherwise allowed by written agreement.

* * * * *

(e) Remove the words ''actuarial table'' and add in their place, the words ''actuarial documents'' in section 7(a).

(f) Revise section 13 to read as follows:

* * * * *

13. Late and Prevented Planting

The late and prevented planting provisions of the Basic Provisions are not applicable.

38. Amend § 457.150 as follows:

(a) Revise the introductory text to read as follows:

**§ 457.150 Dry bean crop insurance provisions.**

The dry bean crop insurance provisions for the 1998 and succeeding crop years are as follows:

* * * * *

(b) Revise the paragraph preceding section 1 to read as follows:

* * * * *

If a conflict exists among the policy provisions, the order of priority is as follows: (1) The Catastrophic Risk Protection Endorsement, if applicable; (2) the Special Provisions; (3) these Crop Provisions; and (4) the Basic Provisions with (1) controlling (2), etc.

* * * * *

(c) Remove the definitions of ''days,'' ''FSA,'' ''final planting date,'' ''good farming practices,'' ''interplanted,'' ''irrigated practice,'' ''late planted,'' ''late planting period,'' ''prevented planting,'' ''production guarantee (per acre),'' ''replanting,'' and ''timely planted,'' and ''written agreement'' in section 1 and revise the definition of ''planted acreage'' to read as follows:

* * * * *

1. Definitions

* * * * *

*Planted acreage*—In addition to the definition contained in the Basic Provisions, beans must initially be planted in rows far enough apart to permit mechanical cultivation, unless otherwise provided by the Special Provisions, actuarial documents, or by written agreement.

* * * * *

(d) Revise section 2 to read as follows:

* * * * *

2. Unit Division

(a) In addition to the definition of basic unit in section 1 of the Basic Provisions, all acreage of contract seed beans qualifies as a separate basic unit. For production based seed bean processor contracts, the basic unit will consist of all the acreage needed to produce the amount of production under contract, based on the actual production history of the acreage. For acreage based seed bean processor contracts, the basic unit will consist of all acreage specified in the contract.

(b) In addition to, or instead of, establishing optional units by section, section equivalent, or FSA farm serial number and by irrigated and non-irrigated acreage as provided in the unit division provisions contained in the Basic Provisions, a separate optional unit may be established for each bean type shown in the Special Provisions.

(c) Contract seed beans may qualify for optional units only if the seed bean processor contract specifies the number of acres under contract. Contract seed beans produced under a seed bean processor contract that specifies only an amount of production or a combination of acreage and production, are not eligible for optional units.

* * * * *

(e) Remove the words ''actuarial table'' and add in their place, the words ''actuarial documents'' in section 7(a).

(f) Revise section 7(c)(3) to read as follows:

* * * * *

7. Insured Crop

* * * * *

(c) * * *

(3) Both parties (you and us) enter into a written agreement allowing insurance on the type in accordance with section 18 of the Basic Provisions.

* * * * *

(g) Revise section 14 to read as follows:

* * * * *

14. Prevented Planting

Your prevented planting coverage will be 60 percent of your production guarantee for timely planted acreage. If you have limited or additional levels of coverage, as specified in 7 CFR part 400, subpart T, and pay an additional premium, you may increase your prevented planting coverage to a level specified in the actuarial documents.

(h) Remove section 15.

39. Amend § 457.151 as follows:

(a) Revise the introductory text to read as follows:

**§ 457.151 Forage seeding crop insurance provisions.**

The forage seeding crop insurance provisions for the 1999 and succeeding crop years are as follows:

* * * * *

(b) Revise the paragraph preceding section 1 to read as follows:

* * * * *

If a conflict exists among the policy provisions, the order of priority is as follows: (1) the Catastrophic Risk Protection Endorsement, if applicable; (2) the Special Provisions; (3) these Crop Provisions; and (4) the Basic Provisions with (1) controlling (2), etc.

* * * * *

(c) Remove the definitions of ''days,'' ''FSA,'' ''final planting date,'' ''interplanted,'' ''irrigated practice,'' ''practical to replant,'' and ''written agreement'' in section 1 and revise the definitions of ''planted acreage'' and ''sales closing date'' to read as follows:

* * * * *

1. Definitions

* * * * *

*Planted acreage*—In addition to the provisions in section 1 of the Basic Provisions, land on which seed is initially spread onto the soil surface by any method and subsequently is mechanically incorporated into the soil in a timely manner and at the proper depth will be considered planted, unless otherwise provided by the Special Provisions, actuarial documents, or written agreement.

*Sales closing date*—In lieu of the definition contained in the Basic Provisions, a date

contained in the Special Provisions by which an application must be filed and by which you may change your crop insurance coverage for a crop year. If the Special Provisions provide a sales closing date for both fall seeded and spring seeded practices for the insured crop and you plant any insurable fall seeded acreage, you may not change your crop insurance coverage after the fall sales closing date for the fall seeded practice.

* * * * *

(d) Revise section 2 to read as follows:

* * * * *

2. Unit Division

A basic unit, as defined in section 1 of the Basic Provisions, will also be divided into additional basic units by spring planted and fall planted acreage.

* * * * *

(e) Remove the words ''actuarial table'' and add in their place, the words ''actuarial documents'' in the following places:

i. Section 1, definition of ''forage;''

ii. Section 3(a); and

iii. Section 6, introductory text.

(f) Revise section 13 to read as follows:

* * * * *

13. Late and Prevented Planting

The late and prevented planting provisions of the Basic Provisions are not applicable.

40. Amend § 457.153 as follows:

(a) Revise the introductory text to read as follows:

**§ 457.153 Peach crop insurance provisions.**

The peach crop insurance provisions for the 1999 and succeeding crop years are as follows:

* * * * *

(b) Revise the paragraph preceding section 1 to read as follows:

* * * * *

If a conflict exists among the policy provisions, the order of priority is as follows: (1) The Catastrophic Risk Protection Endorsement, if applicable; (2) the Special Provisions; (3) these Crop Provisions; and (4) the Basic Provisions with (1) controlling (2), etc.

* * * * *

(c) Remove the definitions of ''days,'' ''FSA,'' ''good farming practices,'' ''irrigated practice,'' ''production guarantee (per acre),'' and ''written agreement'' in section 1.

(d) Remove section 2.

(e) Designate sections 3 through 12 as sections 2 through 11 respectively.

(f) Remove the words ''actuarial table'' and add in their place, the words ''actuarial documents'' in redesignated section 5, introductory text.

(g) Amend section 10(b)(2) to change the section reference therein from ''11(b)(1)'' to ''10(b)(1)''.

(h) Amend section 10(b)(3) to change the section reference therein from ''11(b)(2)'' to ''10(b)(2)''.

(i) Amend section 10(b)(4) to change the section reference therein from ''11(c)'' to ''10(c)''.

(j) Amend section 10(b)(5) to change the section reference therein from ''11(b)(4)'' to ''10(b)(4)''.

(k) Amend section 10(b)(6) to change the section references therein from ''11(b)(5)'' to ''10(b)(5)'' and ''11(b)(3)'' to ''10(b)(3)''.

(l) Amend section 10(b)(7) to change the section reference therein from ''11(b)(6)'' to ''10(b)(6)''.

(m) Amend section 10(c)(1)(i)(B) to change the section reference therein from ''section 10'' to ''section 9''.

(n) Amend section 10(c)(3)(i)(B) to change the section reference therein from ''11(c)(3)(i)(A)'' to ''10(c)(3)(i)(A)''.

(o) Amend section 10(c)(3)(ii)(B) to change the section reference therein from ''11(c)(3)(ii)(A)'' to ''10(c)(3)(ii)(A)''.

(p) Revise section 11 to read as follows:

* * * * *

11. Late and Prevented Planting

The late and prevented planting provisions of the Basic Provisions are not applicable.

* * * * *

41. Amend § 457.155 as follows:

* * * * *

(a) Revise the paragraph preceding section 1 to read as follows:

**§ 457.155 Processing bean crop insurance provisions.**

If a conflict exists among the policy provisions, the order of priority is as follows: (1) The Catastrophic Risk Protection Endorsement, if applicable; (2) the Special Provisions; (3) these Crop Provisions; and (4) the Basic Provisions with (1) controlling (2), etc.

* * * * *

(b) Remove the definitions of ''approved yield,'' ''days,'' ''FSA,'' ''final planting date,'' ''interplanted,'' ''irrigated practice,'' ''production guarantee (per acre),'' ''replanting,'' ''timely planted,'' and ''written agreement'' in section 1 and revise the definition of ''planted acreage'' to read as follows:

* * * * *

1. Definitions

* * * * *

*Planted acreage*—In addition to the definition contained in the Basic Provisions, beans must initially be placed in rows far enough apart to permit mechanical cultivation to be considered planted. Acreage planted in any other manner will not be insurable unless otherwise provided by the Special Provisions or by written agreement.

* * * * *

(c) Revise section 2 to read as follows:

* * * * *

2. Unit Division

(a) For any processor contract that stipulates the amount of production to be delivered:

(1) In lieu of the definition contained in the Basic Provisions, a basic unit will consist of all acreage planted to the insured crop in the county that will be used to fulfill contracts with each processor;

(i) There will be no more than one basic unit for all production contracted with each processor contract;

(ii) In accordance with section 12, all production from any basic unit in excess of the amount under contract will be included as production to count if such production is applied to any other basic unit for which the contracted amount has not been fulfilled; and

(2) Provisions in the Basic Provisions that allow optional units by section, section equivalent, or FSA farm serial number and by irrigated and non-irrigated practices are not applicable. Optional units will not be established.

(b) For any processor contract that stipulates the number of acres to be planted, in addition to or instead of, establishing optional units by section, section equivalent or FSA farm serial number, or irrigated and non-irrigated acreage, optional units may be established by type if acreage of one type does not continue into acreage of another type in the same rows or planting pattern.

* * * * *

(d) Remove the words ''actuarial table'' and add in their place, the words ''actuarial documents'' in section 7(a).

(e) Revise section 13 to read as follows:

* * * * *

13. Late Planting

A late planting period is not applicable to processing beans unless allowed by the Special Provisions and you provide written approval from the processor by the acreage reporting date that it will accept the production from the late planted acres when it is expected to be ready for harvest.

* * * * *

(f) Revise section 14 to read as follows:

* * * * *

14. Prevented Planting

Your prevented planting coverage will be 40 percent of your production guarantee for timely planted acreage. If you have limited or additional levels of coverage, as specified in 7 CFR part 400, subpart T, and pay an additional premium, you may increase your prevented planting coverage to a level specified in the actuarial documents.

42. Amend § 457.157 as follows:

(a) Revise the introductory text to read as follows:

**§ 457.157 Plum crop insurance provisions.**

The plum crop insurance provisions for the 1999 and succeeding crop years are as follows:

* * * * *

(b) Revise the paragraph preceding section 1 to read as follows:

* * * * *

If a conflict exists among the policy provisions, the order of priority is as follows: (1) the Catastrophic Risk Protection Endorsement, if applicable; (2) the Special Provisions; (3) these Crop Provisions; and (4) the Basic Provisions with (1) controlling (2), etc.

* * * * *

(c) Remove the definitions of ''days,'' ''good farming practices,'' ''irrigated practice,'' ''non-contiguous,'' ''production guarantee (per acre)'' and ''written agreement'' in section 1.

(d) Revise section 2 to read as follows:

* * * * *

2. Unit Division

Provisions in the Basic Provisions that allow optional units by section, section equivalent, or FSA farm serial number and by irrigated and non-irrigated practices are not applicable. Optional units must meet one or more of the following, as applicable, unless otherwise provided by the Special Provisions, actuarial documents, or written agreement:

(a) Optional units may be established if each optional unit is located on non-contiguous land.

(b) In addition to, or instead of, establishing optional units for non-contiguous land, optional units may be established by varietal group when provided for in the Special Provisions. The requirements of section 34(a)(1) of the Basic Provisions are not applicable for this method of unit division.

* * * * *

(e) Remove the words ''actuarial table'' and add in their place, the words ''actuarial documents'' in section 6, introductory text.

(f) Revise section 12 to read as follows:

* * * * *

12. Late and Prevented Planting

The late and prevented planting provisions of the Basic Provisions are not applicable.

* * * * *

43. Amend § 457.160 as follows:

**§ 457.160 Processing tomato crop insurance provisions.**

(a) Revise the paragraph preceding section 1 to read as follows:

If a conflict exists among the policy provisions, the order of priority is as follows: (1) The Catastrophic Risk Protection Endorsement, if applicable; (2) the Special Provisions; (3) these Crop Provisions; and (4) the Basic Provisions with (1) controlling (2), etc.

* * * * *

(b) Remove the definitions of ''approved yield,'' ''days,'' ''FSA,'' ''final planting date,'' ''interplanted,'' ''irrigated practice,'' ''production guarantee (per acre),'' ''replanting,'' ''timely planted,'' ''USDA,'' and ''written agreement'' in section 1 and revise the definition of ''planted acreage'' to read as follows:

* * * * *

1. Definitions

* * * * *

*Planted acreage*—In addition to the definition contained in the Basic Provisions, tomatoes must initially be placed in rows to be considered planted. Acreage planted in any other manner will not be insurable unless otherwise provided by the Special Provisions or by written agreement.

* * * * *

(c) Revise section 2 to read as follows:

* * * * *

2. Unit Division

(a) Notwithstanding the provisions of this section or any unit division provisions contained in the Basic Provisions, no indemnity will be paid for any loss of production on any unit if the insured produced a crop sufficient to fulfill the processor contracts forming the basis for the guarantee, and any indemnity will be limited to the amount necessary to compensate for loss in yield at the price elected between production to count and the contract requirements.

(b) In California only, in addition to, or instead of, establishing optional units by section, section equivalent or FSA farm serial number and by irrigated and non-irrigated acreage as provided in the unit division provisions contained in the Basic Provisions, optional units may be established if acreage planted to tomatoes is separated by a field that is not planted to tomatoes, or by a permanent boundary such as a permanent waterway, fence, public road or woodland. Such optional unit must consist of the minimum number of acres stated in the Special Provisions. Acreage planted to tomatoes that is less than the minimum number of acres required will attach to the closest unit within the section, section equivalent, or FSA farm serial number.

* * * * *

(d) Remove the words ''actuarial table'' and add in their place, the words ''actuarial documents'' in sections 7 and 8(a).

(e) Remove section 16.

Signed in Washington, D.C., on December 1, 1997.

**Kenneth D. Ackerman,**

*Manager, Federal Crop Insurance Corporation.*

[FR Doc. 97–31860 Filed 12–4–97; 11:13 am]

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## Part III

# Department of Housing and Urban Development

**24 CFR Parts 201, 202 and 203**

**Termination of an Approved Mortgagee's Origination Approval Agreement; Final Rule**

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

**24 CFR Parts 201, 202 and 203**

**[Docket No. FR–4239–I–01]**

**RIN 2502–AG99**

## Termination of an Approved Mortgagee's Origination Approval Agreement

**AGENCY:** Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

**ACTION:** Interim rule.

**SUMMARY:** This interim rule clarifies and makes minor changes to 24 CFR parts 202 and 203 to improve the provisions regarding termination of a single family mortgagee's origination approval agreement with FHA. The interim rule also corrects errors in 24 CFR parts 201 and 202.

**DATES:** Effective date: January 9, 1998.

Comment due date: February 9, 1998.

**FOR FURTHER INFORMATION CONTACT:** Phillip Murray, Director, Office of Lender Activities and Program Compliance, Department of Housing and Urban Development, Room B–133–P3214, 451 Seventh Street, SW, Washington, DC 20410, telephone number (202) 708–1515 (this is not a toll-free number). A telecommunications device for hearing- and speech-impaired persons (TTY) is available at (800) 877–8339 (Federal Information Relay Service).

**SUPPLEMENTARY INFORMATION:**

Part 202 of title 24 contains the Department's requirements for approval of lenders and mortgagees for FHA insurance programs. The Department reorganized and streamlined part 202 by a recent final rule without making any substantive changes (62 FR 20080, April 24, 1997). The Department also published an interim rule announcing the Lender Insurance program (62 FR 30222, June 2, 1997). This new interim rule includes minor substantive changes to part 202 and corrections to the streamlining and Lender Insurance rules.

Part 202 is amended to state more clearly the provisions regarding termination of an FHA-approved single family mortgagee's origination approval agreement (OAA). The following matters are clarified or changed in § 202.3(d):

- When a mortgagee has a default and claim rate sufficient to support termination of the OAA under the standards of part 202, termination is at the discretion of the Secretary even if the Department in a previous time period could have, but did not, place the mortgagee on credit watch. This is a clarification of the Department's current interpretation.
- A mortgagee will not be permitted to apply for a new OAA for 6 months after termination of an OAA. There is currently no delay required for an application for a new OAA.
- Claims and defaults will be measured for 24 months after a mortgage is insured, instead of the current 18 months for claims and 1 year for defaults. Two references to tracking a mortgagee's default and claims for originations ''during a Federal fiscal year'' are deleted as inconsistent with the uniform 24-month tracking period.

Corrections to the April 24, 1997 final rule include:

- Sections 201.20(a)(3) and 201.26(a)(1)(iii), which had been removed by an interim rule (61 FR 19797–8, May 2, 1996), were inadvertently restored in modified form by the final rule and are now removed again.
- The United States Code citation for the National Housing Act, which was inadvertently omitted, is added to the definition of ''Act'' in § 202.2.
- The definition of ''mortgage'' in § 202.2 is corrected to include mortgages insured under title XI of the National Housing Act to be consistent with the definition of ''Title II program'' which includes title XI.
- Two minor editorial corrections are made to § 202.5: a comma is inserted in the first sentence of § 202.5(i) and ''that'' is inserted in § 202.5(n)(1)(i) to improve clarity.
- ''And'' is changed to ''an'' in § 202.7(b)(4)(i)(A).

In addition, language is added to §§ 203.3 and 203.4 that clarifies HUD's current position that a mortgagee with a terminated OAA also has its approval under the Direct Endorsement and Lender Insurance programs terminated without further procedures.

### Other Matters

*Justification for Interim Rulemaking*

HUD generally publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking in 24 CFR part 10. However, part 10 provides for exceptions to the general rule if the agency finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when prior public procedure is ''impracticable, unnecessary, or contrary to the public interest'' (24 CFR 10.1). HUD finds that good cause exists to publish this rule for effect without first soliciting public comment. However, HUD is allowing for a full 60-day public comment period on the provisions of this interim rule, and HUD will consider the relevant issues raised by the commenters in its development of a final rule for the Lender Insurance program.

Many of the changes are corrections or clarifications that do not alter substantive policy currently in effect. Some of the changes are made for administrative efficiency without any likely substantive effect on mortgagees, such as the use of calendar years and uniform 24 month periods to measure default and claim rates. The new explicit prohibition against applying for a new OAA within 6 months of termination supplements the current requirement that HUD must determine that the underlying cause of the termination must have been satisfactorily remedied before a new origination approval agreement would be approved. Under current practice it is highly unlikely that HUD could ever make that determination within 6 months of a termination. The new provision is an administrative measure designed to avoid futile applications by the mortgagee that must be processed by HUD personnel even when denial is virtually certain.

*Regulatory Flexibility Act*

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this interim rule, and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule merely clarifies and makes minor changes and corrections to the existing regulations. The rule will have no adverse or disproportionate economic impact on small businesses. Small entities are specifically invited, however, to comment on whether this rule will significantly affect them, and persons are invited to submit comments according to the instructions in the **DATES** and **ADDRESSES** sections in the preamble of this interim rule.

*Environmental Impact*

This rulemaking is exempt from the environmental review procedures under HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332) because of the exemption under § 50.19(c)(1) which pertains to ''the approval of policy documents that do not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate property acquisition,

disposition, lease, rehabilitation, alteration, demolition, or new construction, or set out to provide for standards for construction or construction materials, manufactured housing, or occupancy.'' This rulemaking simply amends an existing regulation regarding termination of a mortgagee's approval to originate insured mortgages and does not alter the environmental effect of the regulations being amended. The regulation being amended was also exempt under § 50.19(c)(1), as stated at 62 FR 20080, April 24, 1997.

*Executive Order 12612, Federalism*

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that this rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. No programmatic or policy changes will result from this rule that would affect the relationship between the Federal Government and State and local governments.

*Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4; approved March 22, 1995) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments, and on the private sector. This rule does not impose any Federal mandates on any State, local, or tribal governments, or on the private sector, within the meaning of the UMRA.

*Catalog*

The Catalog of Federal Domestic Assistance number for the programs affected by this interim rule are 14.117 and 14.142.

**List of Subjects**

*24 CFR Part 201*

Health facilities, Historic preservation, Home improvement, Loan programs—housing and community development, Manufactured homes, Mortgage insurance, Reporting and recordkeeping requirements.

*24 CFR Part 202*

Administrative practice and procedure, Home improvement, Manufactured homes, Mortgage insurance, Reporting and recordkeeping requirements.

*24 CFR Part 203*

Hawaiian Natives, Home improvement, Indians—lands, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

Accordingly, parts 201, 202 and 203 of title 24 of the Code of Federal Regulations are amended as follows:

## PART 201—TITLE I PROPERTY IMPROVEMENT AND MANUFACTURED HOME LOANS

1. The authority citation for 24 CFR part 201 is revised to read as follows:

**Authority:** 12 U.S.C. 1703 and 3535(d).

**§ 201.20 [Amended]**

2. Section 201.20 is amended by removing paragraph (a)(3).

3. Section 201.26 is amended by revising paragraph (a)(1) to read as follows:

**§ 201.26 Conditions for loan disbursement.**

(a) * * *

(1) The lender shall ensure that the following conditions are met:

(i) The borrower is eligible for a property improvement loan in accordance with § 201.20(a) (1) or (2); and

(ii) The interest of the borrower in the property is valid, through such title or other evidence as are generally acceptable to prudent lending institutions and leading attorneys in the community in which the property is situated.

* * * * *

## PART 202—APPROVAL OF LENDING INSTITUTIONS AND MORTGAGEES

4. The authority citation for part 202 continues to read as follows:

**Authority:** 12 U.S.C. 1703, 1709 and 1715b; 42 U.S.C. 3535(d).

5. Section 202.2 is amended by revising the definitions of *''Act''*, *''Claim''*, *''Default''*, and *''Mortgage, Title II mortgage or insured mortgage''*, to read as follows:

**§ 202.2 Definitions.**

*Act* means the National Housing Act (12 U.S.C. 1702 *et seq.*)

*Claim* means a single family insured mortgage for which the Secretary pays an insurance claim within 24 months after the mortgage is insured.

*Default* means a single family insured mortgage in default for 90 or more days within 24 months after the mortgage is insured.

* * * * *

*Mortgage, Title II mortgage or insured mortgage* means a mortgage or loan insured under Title II or Title XI of the Act.

* * * * *

6. Section 202.3 is amended by revising paragraph (c)(2)(ii)(A), the first sentence of paragraph (c)(2)(iii), and paragraph (c)(2)(v)(C) to read as follows:

**§ 202.3 Approval status for lenders and mortgagees.**

* * * * *

(c) * * *

(2) * * *

(ii) * * *

(A) The Secretary may notify a mortgagee that its origination approval agreement will terminate 60 days after notice is given, if the mortgagee had a rate of defaults and claims on insured mortgages originated in an area which exceeded 200 percent of the normal rate, and exceeded the national default and claim rate for insured mortgages. The notice may be given without action by the Mortgagee Review Board even if the Secretary previously had the right to issue a credit watch notice to the mortgagee under this section but did not do so.

* * * * *

(iii) Credit watch status. The Secretary may notify a mortgagee that it is on credit watch status if the mortgagee had a rate of defaults and claims on insured mortgages originated in an area which exceeded 150 percent, but not 200 percent, of the normal rate. * * *

* * * * *

(v) * * *

(C) A mortgagee's right to apply for a new origination approval agreement if it continues to be an approved mortgagee meeting the general standards of § 202.5 and the specific requirements of §§ 202.6. 202.7. 202.8 or 202.10, and 202.12, if the mortgagee has had no origination approval agreement for at least 6 months, and if the Secretary determines that the underlying causes for termination have been satisfactorily remedied; or

* * * * *

7. Section 202.5 is amended by revising the first sentence of paragraph (i) and paragraph (n)(1)(i) to read as follows:

**§ 202.5 General approval standards.**

* * * * *

(i) * * * The lender or mortgagee, unless approved under § 202.10, shall pay an application fee and annual fees, including additional fees for each branch office authorized to originate Title I loans or submit applications for mortgage insurance, at such times and

in such amounts as the Secretary may require. * * *

* * * * *

(n) * * *

(1) * * *

(i) The aggregate original amount of insured mortgages that the mortgagee originated and that were insured during the fiscal year, or that the mortgagee purchased as a sponsor from its loan correspondent(s) during the fiscal year; and

* * * * *

8. Section 202.7 is amended by revising paragraph (b)(4)(i)(A) to read as follows:

**§ 202.7 Nonsupervised lenders and mortgagees.**

* * * * *

(b) * * *

(4) * * *

(i) * * *

(A) A financial statement in a form acceptable to the Secretary, including a balance sheet and a statement of operations and retained earnings, an analysis of the mortgagee's net worth adjusted to reflect only assets acceptable to the Secretary, and an analysis of escrow funds; and

* * * * *

## PART 203—SINGLE FAMILY MORTGAGE INSURANCE

4. The authority citation for 24 CFR part 203 is revised to read as follows:

**Authority:** 12 U.S.C. 1709, 1710, 1715b, and 1715u; 42 U.S.C. 3535(d).

5. Section 203.3 is amended by adding a new paragraph (d)(2)(iv) to read as follows:

**§ 203.3 Approval of mortgagees for Direct Endorsement.**

* * * * *

(d) * * *

(2) * * *

(iv) Termination of an origination approval agreement under part 202 of this chapter for a mortgagee or one or more branch offices automatically terminates Direct Endorsement approval for the mortgagee or the branch office or offices without any further requirement to comply with this paragraph.

6. Section 203.4 is amended by adding a new sentence at the end of paragraph (d) to read as follows:

**§ 203.4 Approval of mortgagees for Lender Insurance.**

* * * * *

(d) * * * Termination of an origination approval agreement under part 202 of this chapter or termination of Direct Endorsement approval under § 203.3(d)(2) for a mortgagee or one or more branch offices automatically terminates Lender Insurance approval for the mortgagee or the branch office or offices without any further requirement to comply with this paragraph.

Dated: October 22, 1997.

**Nicolas P. Retsinas,**

*Assistant Secretary for Housing—Federal Housing Commissioner.*

[FR Doc. 97–32250 Filed 12–9–97; 8:45 am]

BILLING CODE 4210–27–P

Federal Register

Wednesday
December 10, 1997

# Part IV

# Department of Justice

## Bureau of Prisons

**28 CFR Part 540**

**Correspondence: Restricted Special Mail Procedures; Final Rule**

**Correspondence: Pretrial Inmates; Final Rule**

**DEPARTMENT OF JUSTICE**

**Bureau of Prisons**

**28 CFR Part 540**

**[BOP–1048–F]**

**RIN 1120–AA48**

## Correspondence: Restricted Special Mail Procedures

**AGENCY:** Bureau of Prisons, Justice.

**ACTION:** Final rule.

**SUMMARY:** In this document, the Bureau of Prisons is amending its regulations on correspondence to provide for restricted special mail procedures in instances where the Warden has reason to believe that the special mail either has posed a threat or may pose a threat of physical harm to the intended recipient. Under these procedures, such special mail is subject to inspection, in the presence of the inmate, for contraband and, at the request of the intended recipient, may be read for the purpose of verifying that the special mail does not contain a threat of physical harm. These amendments are intended to provide for the continued efficient and secure operation of the institution and to protect the public.

**EFFECTIVE DATE:** January 9, 1998.

**ADDRESSES:** Office of General Counsel, Bureau of Prisons, HOLC Room 754, 320 First Street, NW., Washington, DC 20534.

**FOR FURTHER INFORMATION CONTACT:** Roy Nanovic, Office of General Counsel, Bureau of Prisons, phone (202) 514–6655.

**SUPPLEMENTARY INFORMATION:** The Bureau of Prisons is amending its regulations on correspondence (28 CFR part 540). A proposed rule on this subject was published in the **Federal Register** February 14, 1996 (61 FR 5846).

Provisions in § 540.18(c) previously stated that outgoing special mail may be sealed by the inmate and is not subject to inspection. The Bureau proposed a revised paragraph (c) to allow for restricted special mail procedures for special mail addressed to Federal court officials and members of Congress, and, if so requested, to other intended recipients. These restricted special mail procedures would apply in cases where the Warden (with the concurrence of the Regional Counsel) documents in writing that the inmate's special mail either has posed a threat or may pose a threat of physical harm to the intended recipient. Any inmate placed on restricted special mail status would be notified in writing by the Warden of the reason for being so placed. The Warden is required to review an inmate's restricted special mail status at least once every 180 days and to notify the inmate in writing of the results of that review. The inmate may be removed from restricted special mail status if the Warden (with the concurrence of the Regional Counsel) determines that the inmate's special mail does not threaten or pose a threat of physical harm to the intended recipient. Such determinations are based on a comprehensive review of pertinent factors, such as the inmate's institutional adjustment, institution security level, and a current assessment of the conditions which led to the inmate's placement into restricted special mail status.

The Bureau received 8 comments on its proposed rule. Comment generally focused on the purported need for the proposed restrictions, possible infringement on the confidentiality of the attorney-client privilege, possible delay in handling mail being sent to courts, consideration of other means of dealing with the threat posed by such special mail (including duplicative security measures in place for recipients), ulterior motivation for the restrictions, and the general futility of preventing abuse.

With respect to the need for the regulation, the Bureau disagrees with suggestions that the rule misrepresents its intent. The rule is not intended to restrict an inmate's legal access. Instead, it is intended to help ensure institution security, discipline, and good order, and to protect the public. The Bureau notes that instances have occurred where special mail has caused, or has threatened physical injury to the recipient. While these instances may not constitute a widespread problem, neither do the procedures for restricted special mail status pose any change to the special mail privilege for the vast majority of inmates. Even so, for the purpose of assuring its commitment to the integrity of special mail, the Bureau has modified the proposed procedures to protect the special mail privilege to the extent practicable and commensurate with the need for the security, discipline and good order of the institution.

As previously proposed, the procedures apply only to inmates who have been placed on restricted special mail status (that is to say, those inmates whose special mail has been documented by the Warden, with the concurrence of the Regional Counsel, either to have posed a threat or which may pose a threat to the recipient). An inmate in this status must present all materials and packaging intended to be sent as special mail to staff for inspection. Staff shall inspect the special mail material and packaging, in the presence of the inmate, for contraband. This last provision deletes the proposed phrase ''or the threat of physical harm'', as its intent is encompassed within the remaining provision of inspecting for contraband. This change addresses the concern of commenters that the proposed procedure infringes upon the confidentiality of the attorney-client privilege or access to the courts. As revised, the rule now states that staff reading of the correspondence is restricted to when the recipient of the special mail has so requested (the rule as proposed had assumed such permission with respect to Federal court officials and members of Congress). As revised, the procedure now more closely parallels the process for inspecting incoming special mail (see § 540.18).

Upon completion of the inspection, staff shall return the special mail material to the inmate if the material does not contain contraband or, when requested by the intended recipient, a reading determines that there is no threat of physical harm. The inmate must then seal the special mail material in the presence of staff. Special mail determined to pose a threat shall be forwarded to the appropriate law enforcement entity, and staff shall send a copy of the material, minus the contraband, to the intended recipient along with notification that the original of the material was forwarded to the appropriate law enforcement entity.

In response to comments, the Bureau does not expect this procedure to have much impact on the processing of special mail. The limited applicability of the rule and the general Bureau policy that mail be handled promptly should ensure that this mail is processed in a timely fashion.

In response to commenters who suggested that sufficient and less restrictive means were available to the intended recipients of special mail to address threats posed by the special mail, the Bureau believes its procedures are both prudent and unobstrusive. Visually observing the assembling of special mail serves to deter the actual transmission of dangerous materials and is compatible with the existing procedures for handling incoming special mail (see § 540.18). This protects both the intended recipient and other persons involved in the delivery or opening of the special mail. While the Bureau acknowledges, as one commenter noted, that this procedure may not be successful in preventing every possible instance of harm, the

procedure is intended to operate in conjunction with other procedures, such as the ones alluded to by other commenters. Any resultant increase in security which may be obtained through these new procedures clearly is a benefit to the public.

Several commenters expressed concern that Bureau of Prisons staff may abuse their discretion under this provision. As shown, the scope of this rule is clearly limited in its application. Bureau of Prisons staff are professionals and will be familiar with the procedures for applying this rule. In the unlikely event of staff abuse, appropriate disciplinary action will be initiated and appropriate sanctions imposed.

Other commenters raised questions on the general provisions for screening, e.g., how it will be requested, criteria used for assessing threat. In response to such comments, the Bureau again notes that this rule will have limited applicability, with such application governed by § 540.18(c)(2). Placement requires legal review, and notification to the inmate of the reasons for placement. An inmate who disagrees with this decision may appeal the decision through the Administrative Remedy Program (28 CFR part 542).

A commenter questioned the statement in § 540.18(d) advising the recipient of special mail that if the writer raises a question over which the facility has jurisdiction, the recipient may wish to return the material for further information or clarification. The commenter believes that this provision is vague, and that it either should be deleted or specify the return is to the inmate. The Bureau disagrees with this suggestion. This statement is not new and is intended to offer the recipient the opportunity to contact the Bureau of Prisons if that recipient desires further information or clarification over a matter under the Bureau's jurisdiction. The choice on whether this is done is clearly with the recipient of the special mail, and is not violative of an inmate's legal rights.

As a final general comment, the Bureau notes that the provisions for restricted special mail are designed to protect the public and are not motivated by a desire to censor special mail. The procedures for visually observing the assembling of special mail are not dissimilar to procedures already in place for the delivery of special mail. Neither inspection represents any attempt to censor mail. In those instances where the intended recipient has authorized staff to read the special mail (see § 540.18(c)(2)(iii)), the special mail, or a copy of the special mail in cases where the mail has been determined to pose a threat of physical harm, is forwarded to the recipient.

The Bureau of Prisons has determined that this rule is not a significant regulatory action for the purpose of E.O. 12866, and accordingly this rule was not reviewed by the Office of Management and Budget. After review of the law and regulations, the Director, Bureau of Prisons has certified that this rule, for the purpose of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), does not have a significant economic impact on a substantial number of small entities, within the meaning of the Act. Because this rule pertains to the correctional management of offenders committed to the custody of the Attorney General or the Director of the Bureau of Prisons, its economic impact is limited to the Bureau's appropriated funds.

**List of Subjects in 28 CFR Part 540**

Prisoners.

**Kathleen M. Hawk,**

*Director, Bureau of Prisons.*

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(p), part 540 in subchapter C of 28 CFR, chapter V is amended as set forth below.

**SUBCHAPTER C—INSTITUTIONAL MANAGEMENT**

## PART 540—CONTACT WITH PERSONS IN THE COMMUNITY

1. The authority citation for 28 CFR part 540 is revised to read as follows:

**Authority:** 5 U.S.C. 301, 551, 552a; 18 U.S.C. 1791, 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

2. In § 540.18, paragraphs (c) and (d) are revised to read as follows:

**§ 540.18 Special mail.**

* * * * *

(c)(1) Except as provided for in paragraph (c)(2) of this section, outgoing special mail may be sealed by the inmate and is not subject to inspection.

(2) Special mail shall be screened in accordance with the provisions of paragraph (c)(2)(iii) of this section when the special mail is being sent by an inmate who has been placed on restricted special mail status.

(i) An inmate may be placed on restricted special mail status if the Warden, with the concurrence of the Regional Counsel, documents in writing that the special mail either has posed a threat or may pose a threat of physical harm to the recipient (e.g., the inmate has previously used special mail to threaten physical harm to a recipient).

(ii) The Warden shall notify the inmate in writing of the reason the inmate is being placed on restricted special mail status.

(iii) An inmate on restricted special mail status must present all materials and packaging intended to be sent as special mail to staff for inspection. Staff shall inspect the special mail material and packaging, in the presence of the inmate, for contraband. If the intended recipient of the special mail has so requested, staff may read the special mail for the purpose of verifying that the special mail does not contain a threat of physical harm. Upon completion of the inspection, staff shall return the special mail material to the inmate if the material does not contain contraband, or contain a threat of physical harm to the intended recipient. The inmate must then seal the special mail material in the presence of staff and immediately give the sealed special mail material to the observing staff for delivery. Special mail determined to pose a threat to the intended recipient shall be forwarded to the appropriate law enforcement entity. Staff shall send a copy of the material, minus the contraband, to the intended recipient along with notification that the original of the material was forwarded to the appropriate law enforcement entity.

(iv) The Warden shall review an inmate's restricted special mail status at least once every 180 days. The inmate is to be notified of the results of this review. An inmate may be removed from restricted special mail status if the Warden determines, with the concurrence of the Regional Counsel, that the special mail does not threaten or pose a threat of physical harm to the intended recipient.

(v) An inmate on restricted mail status may seek review of the restriction through the Administrative Remedy Program.

(d) Except for special mail processed in accordance with paragraph (c)(2) of this section, staff shall stamp the following statement directly on the back side of the inmate's outgoing special mail: ''The enclosed letter was processed through special mailing procedures for forwarding to you. The letter has neither been opened nor inspected. If the writer raises a question or problem over which this facility has jurisdiction, you may wish to return the material for further information or clarification. If the writer encloses correspondence for forwarding to

another addressee, please return the enclosure to the above address.''

[FR Doc. 97–32325 Filed 12–9–97; 8:45 am]

**BILLING CODE 4410–05–P**

## DEPARTMENT OF JUSTICE

### Bureau of Prisons

### 28 CFR Part 540

**[BOP–1054–F]**

**RIN 1120–AA52**

### Correspondence: Pretrial Inmates

**AGENCY:** Bureau of Prisons, Justice.

**ACTION:** Final rule.

**SUMMARY:** In this document, the Bureau of Prisons is amending its regulations on correspondence to require that general mail from pretrial inmates may not be sealed and may be read and inspected by staff. This amendment is intended to provide for the continued efficient and secure operation of the institution and to protect the public.

**EFFECTIVE DATE:** January 9, 1998.

**ADDRESSES:** Office of General Counsel, Bureau of Prisons, HOLC Room 754, 320 First Street, NW., Washington, DC 20534.

**FOR FURTHER INFORMATION CONTACT:** Roy Nanovic, Office of General Counsel, Bureau of Prisons, phone (202) 514–6655.

**SUPPLEMENTARY INFORMATION:** The Bureau of Prisons is amending its regulations on correspondence (28 CFR part 540, subpart B). A proposed rule on this subject was published in the **Federal Register** December 9, 1996 (61 FR 64954).

Provisions on general correspondence in § 540.14(b) and (c) previously specified that outgoing general mail from pretrial inmates may be sealed by the inmate and are not subject to inspection by staff. On December 9, 1996, the Bureau proposed to require that general mail from pretrial inmates be sent out unsealed and subject to inspection. The proposed requirement matched the requirement for outgoing general mail from sentenced inmates in medium, high, and administrative facilities. Ordinarily, pretrial inmates are housed in administrative facilities. Because pretrial inmates are not classified as to levels of security (as sentenced inmates are), the proposed requirement would apply to pretrial inmates even if they happen to be housed in minimum or low facilities. Special mail, whether from pretrial inmates or sentenced inmates, was unaffected by the proposed amendment.

No public comment was received on the proposed rule, and the Bureau is therefore adopting the proposed rule as final without change.

Members of the public may submit further comments concerning this rule by writing to the previously cited address. These comments will be considered but will receive no response in the **Federal Register**.

The Bureau of Prisons has determined that this rule is not a significant regulatory action for the purpose of E.O. 12866, and accordingly this rule was not reviewed by the Office of Management and Budget. After review of the law and regulations, the Director, Bureau of Prisons has certified that this rule, for the purpose of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), does not have a significant economic impact on a substantial number of small entities, within the meaning of the Act. Because this rule pertains to the correctional management of offenders committed to the custody of the Attorney General or the Director of the Bureau of Prisons, its economic impact is limited to the Bureau's appropriated funds.

### List of Subjects in 28 CFR Part 540

Prisoners.

**Kathleen M. Hawk,**

*Director, Bureau of Prisons.*

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(p), part 540 in subchapter C of 28 CFR chapter V is amended as set forth below.

**SUBCHAPTER C—INSTITUTIONAL MANAGEMENT**

## PART 540—CONTACT WITH PERSONS IN THE COMMUNITY

1. The authority citation for 28 CFR part 540 continues to read as follows:

**Authority:** 5 U.S.C. 301, 551, 552a; 18 U.S.C. 1791, 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

2. In § 540.14, paragraphs (b) and (c) are revised to read as follows:

**§ 540.14 General correspondence.**

* * * * *

(b) Except for ''special mail,'' outgoing mail from a pretrial inmate may not be sealed by the inmate and may be read and inspected by staff.

(c)(1) Outgoing mail from a sentenced inmate in a minimum or low security level institution may be sealed by the inmate and, except as provided for in paragraphs (c)(1)(i) through (iv) of this section, is sent out unopened and uninspected. Staff may open a sentenced inmate's outgoing general correspondence:

(i) If there is reason to believe it would interfere with the orderly running of the institution, that it would be threatening to the recipient, or that it would facilitate criminal activity;

(ii) If the inmate is on a restricted correspondence list;

(iii) If the correspondence is between inmates (see § 540.17); or

(iv) If the envelope has an incomplete return address.

(2) Except for ''special mail,'' outgoing mail from a sentenced inmate in a medium or high security level institution, or an administrative institution may not be sealed by the inmate and may be read and inspected by staff.

* * * * *

[FR Doc. 97–32324 Filed 12–9–97; 8:45 am]

**BILLING CODE 4410–05–P**

Federal Register

Wednesday
December 10, 1997

Part V

# Department of Transportation

**Research and Special Programs Administration**

**49 CFR Part 171**

**Hazardous Materials: Cargo Tank Motor Vehicles in Liquefied Compressed Gas Service; Response To Petitions for Reconsideration; Editorial Revisions; and Rules Clarification; Final Rule**

**DEPARTMENT OF TRANSPORTATION**

**Research and Special Programs Administration**

**49 CFR Part 171**

**[Docket No. RSPA–97–2133 (HM–225)]**

**RIN 2137–AC97**

# Hazardous Materials: Cargo Tank Motor Vehicles in Liquefied Compressed Gas Service; Response To Petitions for Reconsideration; Editorial Revisions; and Rules Clarification

**AGENCY:** Research and Special Programs Administration (RSPA), DOT.

**ACTION:** Final rule; response to petitions for reconsideration; editorial revisions; and rules clarification.

**SUMMARY:** On August 18, 1997, RSPA published a final rule adopting certain safety standards applicable to cargo tank motor vehicles in liquefied compressed gas service. In response to petitions for reconsideration filed by Farmland Industries, Inc. (Farmland), The Fertilizer Institute (TFI), and AmeriGas Propane, L.P. (AmeriGas), RSPA is revising a requirement concerning the daily pressure testing of transfer hoses on these cargo tank motor vehicles, and the agency is revising § 171.5(a) for consistency with § 178.337–11(a)(1)(i) by removing a hose rupture (*i.e.*, incomplete separation) as a condition that causes the internal self-closing stop valve to function. This action grants certain petitions for reconsideration of the final rule pertaining to effective and practical standards to assure the integrity of transfer hoses used in unloading operations. Also, in this final rule, RSPA is granting the request by Farmland and TFI to extend the expiration of the final rule requirements for four months, to July 1, 1999. RSPA is denying the request by AmeriGas for an immediate stay of the provisions of § 171.5(a)(1)(iii) and the AmeriGas request for reconsideration of: The provision in § 171.5(c) setting forth an expiration date for the final rule requirements; and RSPA's interpretation of the attendance requirements in § 177.834(i) that a qualified person must always maintain an unobstructed view of the cargo tank. Additionally, this action makes editorial revisions and clarifies certain provisions adopted in the final rule.

**DATES:** This final rule is effective December 10, 1997.

**FOR FURTHER INFORMATION CONTACT:** Ronald Kirkpatrick, Office of Hazardous Materials Technology, RSPA, Department of Transportation, 400 Seventh Street, S.W., Washington, DC 20590–0001, telephone (202) 366–4545, or Nancy Machado, Office of the Chief Counsel, RSPA, Department of Transportation, 400 Seventh Street, S.W., Washington, DC 20590–0001, telephone (202) 366–4400.

**SUPPLEMENTARY INFORMATION:**

## I. Background

On August 18, 1997, RSPA published a final rule under Docket No. RSPA–97–2133 (HM–225) [62 FR 44038]. The final rule revised and extended requirements published in an interim final rule (IFR) on February 19, 1997, concerning the operation of cargo tank motor vehicles (CTMVs) in certain liquefied compressed gas service. The final rule requires a specific marking on affected CTMVs and requires motor carriers to comply with additional operational controls intended to compensate for the failure of passive emergency discharge control systems to function as required by the Hazardous Materials Regulations (HMR; 49 CFR Parts 171–180). The operational controls specified in the final rule provide an alternative to compliance with § 178.337–11(a)(1)(i) and are intended to ensure an acceptable level of safety while the industry and government continue to work to develop an emergency discharge control system that effectively stops the discharge of hazardous materials from a cargo tank if any attached hose or piping is separated.

Petitions for reconsideration of the August 18, 1997 final rule were filed by The National Propane Gas Association (NPGA), Farmland Industries, Inc. (Farmland), The Fertilizer Institute (TFI) and jointly by Ferrellgas, L.P., Suburban Propane, L.P., AmeriGas Propane, L.P. (AmeriGas), Agway Petroleum Corporation, Cornerstone Propane Partners, L.P., and National Propane, L.P. On September 26, 1997, Ferrellgas, L.P., Suburban Propane, L.P., Agway Petroleum Corporation, Cornerstone Propane Partners, L.P., and National Propane, L.P. withdrew their names from the jointly-filed petition for reconsideration. Petitioner AmeriGas, however, continues to seek relief through the September 17, 1997 petition for reconsideration. On October 2, 1997, NPGA withdrew its petition for reconsideration. On November 5, 1997, National Private Truck Council (NPTC) filed a petition for reconsideration. Although the petition was filed by NPTC after the close of the petition period, and RSPA has not accepted the petition, all NPTC's issues have been considered since NPTC raised issues identical to those raised by other petitioners.

Petitioners Farmland and TFI seek reconsideration of two provisions of the August 18, 1997 final rule. Specifically, they request reconsideration of the requirement in § 171.5(a)(1)(i) that a transfer hose be subjected to full transfer pressure before commencing the first transfer each day. They also ask RSPA to reconsider the expiration date of the August 18, 1997 final rule requirements; they request a four-month extension of the expiration date to July 1, 1999.

AmeriGas seeks: (1) Reconsideration and an immediate stay of the requirement in § 171.5(a)(1)(iii) that the qualified person unloading a CTMV promptly activate the internal self-closing stop valve and promptly shut down all motive and auxiliary power in the event of an unintentional release of lading to the environment during transfer; (2) immediate withdrawal of RSPA's interpretation of its long-standing attendance requirements in § 177.834(i) pending further rulemaking after notice and comment; (3) withdrawal of the expiration date in § 171.5(c); (4) deletion of the word ''rupture'' as it appears in § 171.5(a); and (5) withdrawal of the requirement in § 171.5(a)(1)(i) that the transfer hose be subjected to full transfer pressure before commencing the first transfer each day.

## II. Petitions Granted

### *A. Daily Pressure Testing of Transfer Hoses*

In § 171.5(a)(1)(i), RSPA required that a transfer hose be subject to full transfer pressure before the first unloading of product each day. This provision applied to all CTMVs operating under the terms of the temporary regulation specified in § 171.5.

Petitioners assert that, because most large CTMVs (''transports,'' typically used for bulk plant deliveries) do not have a separate back-to-tank product bypass line, energizing the pump when the receiving tank's liquid shutoff valve is closed may damage the pump vanes, result in failure of the shaft seals and other components, and place high torsional loads on the power take-off (PTO) drive shaft.

In addition, petitioners state that no additional safety measures are needed for small CTMVs (''bobtails,'' typically used for local deliveries) because they are generally equipped with a separate back-to-tank product bypass valve. Petitioners state that, in the process of preparing lines for product transfer from a small CTMV, the full length of transfer hose is charged to pump discharge

pressure, thereby providing an opportunity to prove the integrity of the transfer system prior to each delivery.

Recognizing the merit of the petitioners' comments regarding the transfer hose pressure standard adopted in the final rule, RSPA published an advisory guidance that communicated the agency's agreement with the petitioners' claim that some cargo tank pumping systems are not capable of safely pumping against a closed product valve without being damaged (62 FR 49171; September 19, 1997) . Therefore, § 171.5(a)(1)(i) is revised to allow an operator to determine the leakproofness of a discharge system (including hose) by requiring that the pressure in the discharge system reach at least equilibrium with the pressure inside the cargo tank prior to transfer. After the operator verifies leakproofness of the discharge system, delivery may commence.

RSPA is also amending § 171.5(a)(1)(i) by removing the wording ''and equipment'' from the third sentence to clarify that only the piping, hose and hose fittings must be tested daily. There is no requirement to test the entire cargo tank on a daily basis.

*B. Hose Separation Versus Hose Rupture*

Petitioner AmeriGas notes RSPA's use of the word ''rupture[d]'' in § 171.5(a) with respect to comparable requirements in § 178.337–11(a)(1)(i) concerning operation of the internal self-closing stop valve. The petitioner states that the word ''rupture[d]'' is more commonly used to denote a ''leak or partial failure'' rather than an actual separation, thus creating an undesirable potential for confusion. Therefore, AmeriGas requests that the word ''rupture[d]'' be stricken from the regulatory language.

RSPA agrees that the word ''ruptured'' could be construed as adding new meaning to requirements pertaining to the emergency operation of the internal self-closing stop valve that was not intended in the development of the final rule. Therefore, § 171.5(a) is amended by removing the wording ''ruptured or'' to make this provision consistent with requirements in § 178.337–11(a)(1)(i).

*C. March 1, 1999 Expiration Date of the Temporary Final Rule*

Petitioners TFI and Farmland request that RSPA reconsider the March 1, 1999 expiration date of the requirements in § 171.5. The petitioners request a four-month extension of the alternative requirements in § 171.5—until July 1, 1999—to avoid expiration of the requirements at the beginning of the fertilizer industry's peak delivery season.

RSPA is granting a request by TFI and Farmland to extend the expiration date until July 1, 1999. This decision is based on RSPA's understanding that industry will continue to make good faith efforts in developing an emergency discharge control system that offers an equal or higher level of safety as that in longstanding provisions in § 178.337–11(a)(1)(i).

**III. Petitions Denied**

*A. Prompt Activation of the Internal Self-Closing Stop Valve*

In its petition, AmeriGas contends that it is impossible to achieve immediate full compliance with the requirement in § 171.5(a)(1)(iii) that a qualified person unloading a small CTMV promptly activate the internal self-closing stop valve and promptly shut down all motive and auxiliary power equipment if there is an unintentional release of lading to the environment during transfer. AmeriGas claims this rule constitutes a new operator attendance requirement that can only be satisfied by using remote-controlled equipment that is not currently in service on more than an experimental basis and that such equipment cannot be put into service in less than a matter of months.

In the February 1997 emergency interim final rule (IFR), RSPA first adopted additional requirements for the person who attends the unloading of a CTMV to be within arm's reach of a means for closure (emergency shut-down device) of the internal self-closing stop valve or other device that will immediately stop the discharge of product from the cargo tank [62 FR 7643, February 19, 1997]. Use of an ''electro-mechanical'' device as a means of closure was discussed in that rule. Based on comments to the IFR, RSPA revised § 171.5(a)(1)(iii)(C), in the August final rule, to set forth three ways to achieve prompt stoppage of lading discharge from the cargo tank by: (1) complying with the requirements in § 178.337–11(a)(1)(i); (2) using a qualified person positioned within arm's reach of the mechanical means of closure of the internal self-closing stop valve throughout the unloading operation, except during the short period necessary to engage or disengage the motor vehicle PTO or other mechanical, electrical, or hydraulic means used to energize the pump and other components of a cargo tank's discharge system; or (3) using a remote-controlled system that is capable of stopping the transfer of lading by use of a transmitter carried by a qualified person unloading the cargo tank.

RSPA notes that the NPGA special task force, organized in part to develop plans to provide for continued safe operation of existing propane cargo tanks, concentrated much of its efforts on development of remote-controlled devices that may be activated by the person attending an unloading operation [comments of Mr. McHenry, NPGA, June 23, 1997 public meeting]. A representative of the NPGA special task force reported progress on the development of remote-controlled devices at a June 23, 1997 public meeting [comments of Mr. McHenry, NPGA]. Petitioner AmeriGas also provided a report on its progress in developing an effective, low-cost remote-controlled system using radio frequency technology [comments of Mr. McEnroe, AmeriGas, June 23, 1997 public meeting transcript, pages 5, 45, 56, and 57]. AmeriGas provided RSPA with an update on its progress in a November 13, 1997 meeting. The NPGA's July 24, 1997 petition for rulemaking (P–1346) calls for RSPA to adopt a new provision in § 178.337–11(a)(1)(iii) for a variety of systems that are capable of closing the internal liquid discharge valve by remote means.

The public record contains favorable accounts by several propane dealers who have installed remote-controlled systems on their fleets of CTMVs [comments of Mr. Schuler, REMTRON, June 23, 1997 public meeting transcript, pages 59 and 60; comments of Mr. Stillwaggon, H.R. Weaver Co.; and comments of Mr. McEnroe, AmeriGas, September 30, 1997 public meeting transcript, pages 42 and 61, respectively].

Industry representatives have stated that they have had good results with using radio-frequency, remote-controlled systems [comments of Mr. McEnroe, AmeriGas, public meeting transcript, June 23, 1997, page 46; Dr. Coady, Hick's Gas, June 23, 1997 public meeting transcript, pages 92 and 102]. A representative of Hicks Gas, one of the larger independent marketers of propane, stated that his company has been developing and refining remote-control shutdown systems on some of its trucks for the past three years [comments of Dr. Coady, Hick's Gas, June 23, 1997 public meeting transcript, page 92].

During two public meetings (June 23, 1997 and September 30, 1997) industry representatives presented information on radio frequency, remote-controlled systems, some with basic features and others with more sophisticated applications, that can be used on most

CTMVs. Additionally, they represented that the installation instructions for these systems are simple enough that a fleet mechanic who has a working knowledge of a vehicle's air and electrical systems generally has the experience and tools necessary to install and proof-test a system within a period of two or three hours.

The advantage of a remote-controlled device has been demonstrated during an incident involving a propane release on November 3, 1997 near Udina, Illinois. The driver, using a remote-controlled device, promptly activated closure of the internal self-closing stop valve without ignition of the propane.

RSPA does not agree that operators of CTMVs have no practical means of compliance. The public record contains information that some operators began installing remote-controlled systems shortly after issuance of the February 19, 1997 interim final rule. In addition, the Federal Highway Administration's (FHWA) compliance policy emphasizes increased awareness about the rule and its safety benefits, as opposed to immediate enforcement. If a company shows good faith efforts to comply with the provisions of § 171.5, FHWA's policy is to not pursue civil penalty enforcement actions.

Therefore, based on the above information, this part of the AmeriGas petition for reconsideration of the final rule is denied.

RSPA believes there is a need to clarify that while the first sentence of § 171.5(a)(1)(iii)(C) allows use of a remote-controlled system to promptly activate the internal self-closing stop valve in the event of an unintentional discharge, the second sentence provides limited relief from the attendance requirements in § 177.834(i)(3). Specifically, § 177.834(i)(3) requires a qualified person who is attending the unloading of a cargo tank to be awake, have an unobstructed view of the cargo tank, and be within 25 feet of the cargo tank at all times during unloading. Therefore, the second sentence in § 171.5(a)(1)(iii)(C) is revised to clarify that where a remote-controlled system is used, the attendance requirements in § 177.834(i)(3) are satisfied when the qualified person attending is awake, is carrying a transmitter that can activate the closure of the internal self-closing stop valve, remains within the operating range of the transmitter, and maintains an unobstructed view of the cargo tank when the internal self-closing stop valve is open.

Also, § 171.5(a)(1)(iii)(B) is revised to clarify that a qualified person must be positioned within arm's reach of a mechanical means of closure for the internal self-closing stop valve *only* when this valve is open, except for the short duration necessary to engage or disengage the motor vehicle PTO or other mechanical, electrical or hydraulic means used to energize the pump and other components of a cargo tank motor vehicle's discharge system. All of these functions occur at or immediately adjacent to the cargo tank in proximity to a means for closure of the internal self-closing stop valve.

*B. RSPA Has Not Developed a ''New Interpretation'' of Its Long-Standing Attendance Requirement in § 177.834(i)*

In its petition, AmeriGas states that, in the August 18, 1997 final rule, RSPA announced a new interpretation of the long-standing attendance requirements set forth at § 177.834(i). AmeriGas contends that this interpretation should be withdrawn because it: (1) is inconsistent with the regulatory language; (2) was announced without notice or opportunity to comment, in violation of the Administrative Procedure Act (APA) (*see* 5 U.S.C. 553); and (3) is inconsistent with normal industry practice that has been ''accepted for decades without question.''

AmeriGas's arguments are invalid because RSPA's position with regard to the meaning of § 177.834(i) is consistent with the regulatory history and plain language of that requirement. Furthermore, the public was given notice of the rulemaking that gave rise to the attendance requirements and an opportunity to comment. Indeed, comments to that rulemaking reflect that industry understood that restrictions on the person attending the unloading of hazardous materials from CTMV's were being proposed. Additional notice and an opportunity to comment are, therefore, not required under the APA. Finally, there is no validity to the assertion that, for decades, the Department has accepted widespread industry non-compliance with the attendance requirements. For these reasons, AmeriGas's petition for reconsideration of RSPA's position regarding the § 177.834(i) attendance requirements is denied.

1. RSPA's Position Is Consistent With the Regulatory History and Plain Language of the Attendance Requirements in § 177.834(i)

AmeriGas argues in favor of an industry interpretation that compliance with § 177.834(i) can be achieved by having a single operator remain in proximity to, and maintain an unobstructed view of, any part of the *delivery hose.*

The position that RSPA has taken with regard to the meaning of the attendance requirements in 49 CFR 177.834(i) is not only consistent with the plain language of the regulation but the regulatory history of the regulation as well. Section 177.834(i) states:

* * * * *

(2) *Unloading.* A motor carrier who transports hazardous materials by a cargo tank must ensure that the cargo tank is attended by a qualified person at all times during unloading. . . .

(3) A person ''attends'' the loading or unloading of a *cargo tank* if, throughout the process, he is awake, has an unobstructed view of the *cargo tank,* and is within 7.62 meters (25 feet) of the cargo tank.

* * * * *

(5) A delivery hose, when attached to the cargo tank, is considered a part of the *vehicle* (Emphasis added.)

RSPA's position consistently has been that the plain language of § 177.834(i) requires an attendant to maintain an unobstructed view of the *cargo tank* and be within 25 feet of the *cargo tank* during the unloading process.[1] Contrary to AmeriGas's assertion, the term ''cargo tank'' means the cargo tank itself and does not mean the hose or CTMV. The language of § 177.834(i)(5) plainly states that the hose is part of the vehicle not the cargo tank.

AmeriGas contends that there is support for industry's interpretation of the § 177.834(i)(3) requirements in the regulatory history of these requirements. Specifically, AmeriGas relies on language that appeared in a republication of 49 CFR Parts 71–90 by the Interstate Commerce Commission (ICC) on December 29, 1964 (29 FR 18652). (The ICC regulated hazardous materials transportation by highway and rail prior to 1967, the year the Department of Transportation (DOT) was established). The regulatory text AmeriGas relies on reads, ''Under no circumstances shall a tank motor vehicle be left unattended during the loading or unloading process. For the purpose of this part, the delivery hose, when attached to the motor vehicle, shall be deemed a part thereof.'' (December 29, 1964; 29 FR 18801). RSPA believes this regulatory language makes it clear that a CTMV operator must attend the CTMV and any delivery hose attached to the motor vehicle

[1] RSPA's position is supported by National Fire Protection Association publication ''Standard for the Storage and Handling of Liquefied Compressed Gases'' (NFPA 58), reported as adopted by 49 of 50 states. Section 4–2.3.3 requires, during unloading into storage containers, that ''the shutoff valves on both the truck and the container are readily accessible.''

during loading and unloading. The intent of this provision was to ensure that the operator took responsibility for the entire delivery system which, for purposes of Part 77, included not only the motor vehicle itself but also the delivery hose when attached to the motor vehicle. However, the 1964 language in § 77.834(i) was not specific as to what actions constituted ''attendance.''

Realizing that the word ''attendance'' was vague and that there was industry confusion regarding what was required under the attendance regulation, the Hazardous Materials Regulations Board (the Board), the predecessor to RSPA's Office of the Associate Administrator for Hazardous Materials Safety, initiated a rulemaking in Docket HM–110 to clarify the attendance requirement. Language in the notice of proposed rulemaking (NPRM) and the final rule in Docket HM–110 serves as the basis for RSPA's interpretation of the current attendance requirement. Specifically, in the preamble to the HM–110 NPRM, the Board stated:

> The Board has found that several dangerous incidents have occurred during the loading or unloading of tank motor vehicles which could have been avoided, if there had been someone *near the cargo tank* to take corrective action or precautionary action. The Board feels that there may be some confusion as to the intent of the term ''attendance'' as it is used in § 177.834(i). (Emphasis added).

38 FR 22901, August 27, 1973.

Based on this concern, the Board proposed to revise the regulation to include a requirement that an operator remain within 25 feet of the cargo tank motor vehicle. The Board also proposed to delete the limiting language ''for the purpose of this part'' from the hose provision of the attendance requirements, thereby making the delivery hose part of the tank motor vehicle not only for loading and unloading purposes, but for other regulatory purposes as well (*e.g.*, incident reporting). Specifically, the Board proposed to revise the attendance requirements in § 177.834(i) to state:

> (1) A tank motor vehicle is attended when the person in charge of the vehicle is awake and not in a sleeper berth, and is within 25 feet of the tank motor vehicle and has it within his unobstructed field of view. . . . (3) The delivery hose, when attached to the tank motor vehicle, is a part of the vehicle.

*Id*. at 22902.

In its January 11, 1973 comments to the Board's proposed revision to § 177.834(i), the National LP-Gas Association (NLPGA) (now NPGA) proposed to revise the language to reinsert the limiting language ''for the purpose of this part'' with regard to the hose provision of the attendance requirements. Specifically, the NLPGA proposed to revise § 177.834(i)(3) to read ''For the purposes of this part the delivery hose, when attached to the tank motor vehicle, is a part of the vehicle.'' In explaining the proposed reinsertion of limiting words ''for the purposes of this part,'' the NLPGA stated: ''*We have no objection to a requirement that the motor vehicle operator or motor vehicle attendant be expected to attend the unloading hose as well as the vehicle* since in most cases he will provide the hose and will have connected it to the unloading equipment. We don't feel the delivery hose should be considered as a part of the motor vehicle.'' (Emphasis added). Industry's comments on the HM–110 NPRM indicate that industry fully understood that the Board proposed to require an attendant to remain within 25 feet of the cargo tank motor vehicle and hose, and maintain an unobstructed view of the cargo tank motor vehicle and hose. It is apparent from the NLPGA's comments to the proposed changes to § 177.834(i) that it understood the Board's concerns and its intent.

In the HM–110 final rule, the language that currently appears at § 177.834(i)(3), other than the addition of metric conversion of 25 feet, was adopted by the Board. Section 177.834(i)(3) currently reads, ''A person 'attends' the loading or unloading of a cargo tank if, throughout the process, he is awake, has an unobstructed view of the cargo tank, and is within 7.62 meters (25 feet) of the cargo tank.'' Section 177.834(i)(5) currently reads, ''A delivery hose, when attached to the cargo tank, is considered a part of the vehicle.'' In the final rule, the Board adopted the language in § 177.834(i)(3) that refers to the ''*cargo tank*'' and not the ''tank motor vehicle,'' as proposed in the NPRM. The language in § 177.834(i)(5), however, continues to refer to the hose as part of the *vehicle.* The final rule requires a qualified person attending the loading or unloading of a cargo tank to remain within 25 feet of the cargo tank, maintain an unobstructed view of the cargo tank, and to attend the hose to the same extent that the qualified person attends to the cargo tank motor vehicle under the HMR.

AmeriGas also cites Shell Oil Company's October 26, 1973 comments to the Board's proposed revision of the attendance requirements in Docket HM–110 as support for its interpretation of the attendance requirements and evidence that the agency was aware of the industry's interpretation of the attendance requirements. Specifically, AmeriGas points to Shell Oil's comment that ''Section 177.834(i)(1) requiring an attendant within 25 feet of the tank motor vehicle *or* its hose is over restrictive in cases where tight fill connections are used which are now in the majority.'' (Emphasis added.) AmeriGas places great weight on the fact that Shell used the word ''or'' rather than ''and'' to describe the proposed requirements. AmeriGas states that the word ''or'' put DOT on notice that the proposed language was being interpreted to allow an operator to comply with the attendance requirements by remaining within 25 feet of any part of the hose and maintaining an unobstructed view of any part of the hose.

AmeriGas, however, did not recognize or discuss the next sentence in Shell's comments which reads, ''*This restriction* prohibits performance of other duties and would unnecessarily increase delivery costs.'' (Emphasis added). AmeriGas's interpretation of the attendance requirements would allow an operator to be within 25 feet of and have an unobstructed view of, any part of the CTMV including, any part of its hose. Under AmeriGas's interpretation, there is virtually no restriction on an operator's ability to perform other duties—an operator can be virtually anywhere between the cargo tank motor vehicle and the receiving tank—and a single operator can always satisfy the industry interpretation of the attendance requirements. The preceding regulatory history indicates that the Board intended to restrict the movement of the person unloading a cargo tank by requiring the operator to remain within 25 feet of the cargo tank and maintain an unobstructed view of the cargo tank, resulting in a limitation on the attendant's ability to perform other duties or activities. The type of precautionary action the Board contemplated when it initiated HM–110 cannot be taken if a cargo tank attendant is more than 25 feet away from the cargo tank, out of sight behind a building or other obstruction, or both. This sentence indicates that Shell understood that the Board was proposing new restrictions on unloading operations.

RSPA squarely rejected industry's interpretation of the attendance requirements during public meetings and workshops, in written correspondence,[2] and in the preamble to

[2] *See* October 3, 1997 letter to Barton Day, Esq., counsel for Ferrellgas, L.P., Suburban Propane, L.P., AmeriGas Propane L.P., Agway Petroleum Corporation, Cornerstone Propane Partners, L.P.,

Continued

the August 18, 1997 final rule.[3] Specifically, the preamble to the final rule states:

RSPA rejects the industry's interpretation of the long-standing operator attendance rules in § 177.834(i)(3) that a single operator satisfies requirements for an unobstructed view of the cargo tank, and is within 25 feet of the cargo tank, merely by being in proximity to, and having an unobstructed view of, any part of the delivery hose, which may be 100 feet or more away from the cargo tank motor vehicle, during the unloading (transfer) operation. The rule clearly requires an operator be in a position from which the earliest signs of problems that may occur during the unloading operation are readily detectable, thereby permitting an operator to promptly take corrective measures, including moving the cargo tank, actuating the remote means of automatic closure of the internal self-closing stop valve, or other action, as appropriate. RSPA contends the rule requires that an operator always be within 25 feet of the cargo tank. Simply being within 25 feet of any one of the cargo tank motor vehicle's appurtenances or auxiliary equipment does not constitute compliance.

62 FR at 44044.

Because RSPA's position is consistent with the regulatory history and plain language of 49 CFR 177.834(i), petitioner's request that RSPA withdraw its interpretation is denied.

2. Additional Notice and Comment Are Not Required Under the APA.

AmeriGas alleges that RSPA's ''new interpretation'' was announced without notice or opportunity to comment, in violation of the APA.

Section 553 of the APA requires that Federal agencies give the public an opportunity to participate in the rulemaking process by giving notice, in the **Federal Register**, of either the terms or substance of a proposed rule or a description of the subjects and issues involved, and an opportunity to submit written data, views, or arguments. As discussed above, the Board realized that the word ''attendance'' was vague, as used in the original ICC attendance regulations, and that there was industry confusion regarding what was required. Consequently the Board issued an NPRM, in docket HM–110, proposing to clarify the attendance requirements. In issuing the NPRM, the Board specifically noted that there had been several dangerous incidents during the loading or unloading of cargo tank motor vehicles that the Board felt could have been avoided had someone been near the cargo tank to take corrective or precautionary action.

The Board's clearly specified reasons for undertaking the HM–110 rulemaking, in conjunction with the proposed regulatory language, NLPGA's and Shell Oil's comments on that language, and the language of the final regulatory requirements all demonstrate that: (1) the public was given notice of the Board's intent to require an operator to be near the cargo tank during unloading, and an opportunity to comment; and (2) RSPA's position on the § 177.834(i) attendance requirement is long-standing and reflects industry understanding of the requirements at the time they were proposed and adopted. Therefore, RSPA's statements concerning the attendance requirements in § 177.834(i) do not in any way change the regulations or constitute rulemaking. Consequently, further notice and comment under the APA is not necessary.

3. DOT Was Not Aware of Widespread Non-Compliance.

AmeriGas claims that in the decades before—and 22 years since—the attendance requirements in § 177.834(i) were adopted, small CTMVs typically carried delivery hoses of 100 feet or more in length and were attended during at least a substantial portion of the unloading process from the position of the customer tank. AmeriGas states that these vehicles have operated openly and have been inspected by DOT officials on hundreds of occasions over the years without any suggestion that the routine operation of these vehicles under the industry's interpretation of § 177.834(i)(3) was improper. AmeriGas thus asserts that DOT has accepted for decades without question industry's long-standing practice of not remaining within 25 feet of the cargo tank and not maintaining an unobstructed view of it.

Although, FHWA inspectors occasionally inspect small CTMVs at roadside inspection facilities, they do not inspect the hose to determine its length as part of their routine inspection procedures. Neither the HMR nor the Federal Motor Carrier Safety Regulations, 49 U.S.C. Parts 350–399, restrict hose length. Additionally, neither FHWA nor RSPA inspectors routinely inspect small CTMV unloading operations. Thus, the Department was not aware that small CTMV deliveries of propane were being made in violation of the HMR. The fact that FHWA inspectors may have observed small CTMVs with hose lengths in excess of 100 feet does not support the argument that DOT knew that deliveries were being made in violation of the HMR.

The National Fire Protection Association (NFPA) publication ''Standard for the Storage and Handling of Liquefied Compressed Gases'' (NFPA 58) reported by NFPA as adopted by 49 of 50 states (with Texas preparing to adopt NFPA 58 next year), has unloading requirements that are consistent with and provide support to the HMR requirement that a qualified person maintain an unobstructed view of the cargo tank, and be in a position to promptly effect emergency procedures should there be a line separation or other problem requiring immediate attention. Specifically, at Section 4–2.1.1, NFPA 58 states:

Transfer operations shall be conducted by qualified personnel meeting the provisions of Section 1–5. *At least one qualified person* shall remain in attendance at the transfer operation from the time connections are made until the transfer is completed, shutoff valves are closed, and lines are disconnected. (Emphasis added).

In addition, Section 4–2.3.3 of NFPA–58 requires:

Cargo vehicles (see Section 6–3) unloading into storage containers shall be at least 10 feet (3.0 m) from the container and so positioned *that the shutoff valves on both the truck and the container are readily accessible.* (Emphasis added).

The fourth edition of the LP Gases Handbook, published by the NFPA interprets Section 4–2.3.3 as follows: ''* * * The unloading cargo vehicle should be a distance from the container receiving the product so that if something happens at either point, the other will not be involved to the extent that it would be if it were in close proximity. Also, it is important to have the cargo vehicle so located that it is easy to get to the valves on both the truck and the container so that they can quickly be shut off if there is an emergency need to do so. * * * ''[4] NFPA recognizes the importance of attending both the receiving tank and the cargo tank. RSPA believes that both warrant attention during unloading and that it is important to position these tanks so that this safety objective is achievable.

The importance of having a qualified person in a position to promptly effect closure of the internal valve and to shut down all motive and auxiliary power has been re-affirmed by two recent unloading incidents that resulted in the death of one operator and injury to

and National Propane, L.P. (item no. 188 in RSPA docket 97–2133).

[3] Because of industry's concerns about the attendance requirements, RSPA indicated in a June 9, 1997 notice [62 FR 31363] that it would initiate a new rulemaking to review and possibly revise the attendance and other regulatory requirements (*see* Docket No. RSPA–97–2718).

[4] Theodore C. Lemoff, ed., *LP–GASES Handbook,* 4th ed. (Quincy: National Fire Protection Association, 1995), p. 307.

another.[5] These incidents did not involve the separation of hose or piping, which emergency discharge control system requirements are meant to address, but were the result of equipment failures, which the attendance requirements in § 177.834(i) are meant to address. The CTMV was the suspected source of ignition in both of these incidents. Based on initial reports, had a qualified person been in attendance within 25 feet of the CTMV, he would have had a better chance of closing the internal self-closing stop valve prior to ignition.

Therefore, based on the above information, RSPA denies that part of AmeriGas's petition for reconsideration concerning the attendance requirements. The attendance requirement is intended to address a number of potentially serious threats to safety that may arise during the course of unloading, including failure of a parking brake to prevent movement of a motor vehicle; equipment failures (*e.g.,* pump leaks and leaks at a hose reel); and entry into the vicinity of the motor vehicle by persons who are carrying smoking materials. In all such instances, the qualified person attending the unloading operation must be aware of potential and actual threats to safety and be prepared to implement emergency procedures intended to minimize or eliminate those threats.

*C. Need for Additional Operational Controls*

AmeriGas states that RSPA's central basis for the interim requirements imposed under the August rule is that there is a need to address safety concerns that exist due to the inability of the emergency discharge control system currently in service on ''bobtail vehicles'' in compressed gas service to function in accordance with the HMR as specified under § 178.337–11(a)(1)(i). The petitioner then states that the record does not demonstrate the need for new requirements because the record does not include even a single documented incident involving the failure of the emergency discharge control system on a bobtail vehicle. Further, the petitioner states that the risk of such an event is extraordinarily remote and that there is no safety threat sufficient to warrant the imposition of burdensome interim operator attendance requirements for bobtails. Finally, the petitioner claims that RSPA's decision to impose burdensome interim operator attendance requirements for small CTMVs reflects a disregard of the evidence before it and arbitrarily fails to consider less burdensome regulatory alternatives.

In response, RSPA's underlying purpose of alternative operational controls adopted in the current requirements is to assure that persons who are dependent upon propane, anhydrous ammonia, and other liquefied compressed gases continue to receive those essential materials in a manner that does not impose unacceptable threats to public health and safety. The challenge was to develop rules for approximately 25,000 pump-equipped cargo tank motor vehicles (estimated to comprise the universe of specification MC–330, MC–331, and related non-specification cargo tanks) that industry determined may not conform to the long-standing requirements in § 178.337–11(a)(1)(i) for an emergency discharge control system (*see* emergency exemption applications filed by Mississippi Tank, National Tank Truck Carriers, NPGA and TFI; December 1996).

In developing the temporary alternative requirements, RSPA first determined there must be an effective means of providing for prompt closure of the internal self-closing stop valve under emergency conditions until industry could develop a system that provides a level of safety equal to that provided by § 178.337–11. The risks posed by an uncontrolled release of propane from a cargo tank motor vehicle are so great that, while RSPA sought to minimize the cost of compliance with the alternative requirements, safety was RSPA's primary concern. Additional training and hose testing requirements adopted in § 171.5 may reduce the risks of a release, but such measures do not provide a means of stopping the flow of propane once a release occurs.

The petitioner relies on a small number of incidents cited in the public docket to support its contention that the safety concern with regard to small CTMVs is minuscule. However, RSPA notes that: (1) industry is not required to report to DOT the occurrence of propane incidents or accidents that occur in intrastate commerce—which encompasses the vast majority of small CTMV deliveries; and (2) the small number of incidents in the record are not representative of the entire universe of incidents of which RSPA is aware. Federal hazardous materials transportation law at 49 U.S.C. 5103 directs the Secretary of Transportation to prescribe regulations for the safe transportation of a hazardous material when the Secretary determines that transporting a material in commerce in a particular amount and form may pose an unreasonable risk to health and safety or property. In developing safety regulations, RSPA must consider potential hazards posed by a material and may not base its regulatory decisions solely on the number of reported incidents.

For the reasons discussed above, RSPA denies this element of the petitioner's request for reconsideration of the final rule.

*D. March 1, 1999 Expiration Date of the Temporary Final Rule Requirements*

AmeriGas states that the legal effect of the expiration clause in the final rule is to require operators of small CTMVs to have in place passive emergency discharge control systems that will meet RSPA's requirements under § 178.337–11(a)(1)(i) by March 1, 1999. AmeriGas requests that the expiration date specified in § 171.5(c) be stricken pending completion of the rulemaking proceeding under Docket RSPA–97–2718 (HM–225A) that addresses long-term compliance issues.

On August 18, 1997, RSPA published an advance notice of proposed rulemaking (ANPRM) in Docket HM–225A (62 FR 44059) requesting comments regarding jurisdiction, emergency discharge controls, qualification and use of delivery hoses, and attendance requirements. The questions posed in the ANPRM are indicative of the range of options RSPA is considering, this includes various retrofit schedules for installation of new equipment. RSPA is mindful of industry's concerns and will take them into consideration in formulating a long-term compliance plan under HM–225A. Additionally, affected parties may choose to install systems that meet the

[5] Initial reports from the Fire Marshall of Burke County, North Carolina indicate that on September 23, 1997, in Morganton, North Carolina, a Piedmont Natural Gas operator was at the receiving tank (approximately 80 feet from the cargo tank motor vehicle) when the hose nozzle became clogged with a foreign object believed to be part of the meter, thus preventing the operator from closing the nozzle when the customer tank became full. Consequently, the receiving tank overfilled and propane continued to flow from the hose at full pressure when the operator disconnected the hose from the receiving tank. The operator began to approach the cargo tank motor vehicle in order to manually shut the internal self-closing stop valve, but there was an explosion and fire before he could take emergency action. The operator received second-and third-degree burns over most of his body and died shortly thereafter.

On June 6, 1997, in Fayetteville, North Carolina, an AmeriGas operator stopped product transfer and was in the process of disconnecting the transfer hose from the receiving tank when he observed white fog escaping from under the truck. He immediately dropped the transfer hose and ran toward the truck (approximately 60 feet) to activate the engine kill switch and the emergency internal self-closing stop valve. When he was within 10 to 12 feet of the truck, the escaped gas vapors ignited, causing second degree burns to the operator's face and right thigh.

current requirements in § 178.337–11(a)(1)(i). For these reasons, RSPA denies AmeriGas's request for reconsideration of that part of the final rule concerning the expiration date of § 171.5.

## IV. Rulemaking Analyses and Notices

*A. Executive Order 12866 and DOT Regulatory Policies and Procedures*

This final rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and was not reviewed by the Office of Management and Budget. This rule is not considered significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11034; February 26, 1979). This rule revises a safety standard for verifying the integrity of transfer hoses on cargo tank motor vehicles in liquefied compressed gas service and makes other minor, non-substantive changes.

The final rule published on August 18, 1997, was a significant regulatory action under section 3(f) of Executive Order 12866 and was reviewed by the Office of Management and Budget. The rule also was considered significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034).

RSPA did not prepare a regulatory evaluation for this final rule addressing the issue of revising the transfer hose pressure requirement. However, a final regulatory evaluation was prepared in support of the final rule published on August 18, 1997. The final regulatory evaluation is available for review in the public docket.

*B. Executive Order 12612*

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 (''Federalism''). The Federal hazardous materials transportation law, 49 U.S.C. 5101–5127, contains an express preemption provision (49 U.S.C. 5125(b)) that preempts State, local, and Indian tribe requirements on certain covered subjects. Covered subjects are:

(1) The designation, description, and classification of hazardous materials;

(2) The packing, repacking, handling, labeling, marking, and placarding of hazardous materials;

(3) The preparation, execution, and use of shipping documents related to hazardous materials and requirements related to the number, contents, and placement of those documents;

(4) The written notification, recording, and reporting of the unintentional release in transportation of hazardous material; or

(5) The design, manufacture, fabrication, marking, maintenance, recondition, repair, or testing of a packaging or container represented, marked, certified, or sold as qualified for use in transporting hazardous material.

This rule addresses covered subject item (5) above and preempts State, local, and Indian tribe requirements not meeting the ''substantively the same'' standard. Federal hazardous materials transportation law provides at § 5125(b)(2) that, if DOT issues a regulation concerning any of the covered subjects, DOT must determine and publish in the **Federal Register** the effective date of Federal preemption. The effective date may not be earlier than the 90th day following the date of issuance of the final rule and not later than two years after the date of issuance. RSPA has determined that the effective date of Federal preemption for these requirements will be March 10, 1996. Thus, RSPA lacks discretion in this area, and preparation of a federalism assessment is not warranted.

*C. Regulatory Flexibility Act*

The Regulatory Flexibility Act (Act), as amended, 5 U.S.C. 601–612, directs agencies to consider the potential impact of regulations on small business and other small entities. The Act, however, applies only to rules for which an agency is required to publish a notice of proposed rulemaking pursuant to § 553 of the Administrative Procedure Act (APA), 5 U.S.C. 553. *See* 5 U.S.C. 603(a) and 604(a). Because of the emergency nature of the final rule published on August 18, 1997, RSPA was authorized under sections 553(b)(B) and 553(d)(3) of the APA to forego notice and comment and to issue the final rule with an immediate effective date. Nevertheless, RSPA was concerned about the effect the final rule would have on small businesses and, in preparing preliminary and final regulatory evaluations under Executive Order 12866, analyzed the impact of the interim final rule and final rule on all affected parties, including small businesses. Consequently, RSPA is not required under the Act to do a regulatory flexibility analysis for this final rule.

*D. Unfunded Mandates Reform Act*

This rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $100 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objective of the rule.

*E. Paperwork Reduction Act*

This rule does not impose any new information collection burdens. The information collection and recordkeeping requirements contained in the final rule were submitted for renewal to the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1995. The requirement has been approved under OMB Control Number 2137–0595.

*F. Regulation Identifier Number (RIN)*

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

**List of Subjects in 49 CFR Part 171**

Exports, Hazardous materials transportation, Hazardous waste, Imports, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR part 171 is amended as follows:

## PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

1. The authority citation for Part 171 continues to read as follows:

**Authority:** 49 U.S.C. 5101–5127; 49 CFR 1.53.

2. In § 171.5, paragraphs (a)(1)(i), (a)(1)(iii)(B) and (a)(1)(iii)(C)(*3*) are revised to read as follows:

**§ 171.5 Temporary regulation; liquefied compressed gases in cargo tank motor vehicles.**

(a) * * *

(1) * * *

(i) Before initiating each transfer from a cargo tank motor vehicle to a receiving system, the person performing the function shall determine that each component of the discharge system (including hose) is of sound quality and free of leaks and that connections are secure. This determination shall be made after the pressure in the discharge system has reached no less than equilibrium with the pressure in the cargo tank.

* * * * *

(iii) * * *

(B) A qualified person positioned within arm's reach of a mechanical means of closure of the internal self-

closing stop valve at all times the internal self-closing stop valve is open; except, that person may be away from the mechanical means only for the short duration necessary to engage or disengage the motor vehicle power take-off or other mechanical, electrical, or hydraulic means used to energize the pump and other components of the cargo tank motor vehicle's discharge system; or

(C) * * *

(3) Is awake throughout the unloading process, and has an unobstructed view of the cargo tank at all times that the internal self-closing stop valve is open.

* * * * *

**§ 171.5 [Amended]**

3. In addition, in § 171.5 the following changes are made:

a. In paragraph (a) introductory text, in the first sentence, ''ruptured or'' is removed.

b. In paragraph (a)(1)(ii), in the third sentence, ''and equipment'' is removed.

c. In paragraph (c), the date ''March 1, 1999'' is revised to read ''July 1, 1999''.

Issued in Washington, DC on December 5, 1997, under authority delegated in 49 CFR part 1.

**Kelley Coyner,**

*Acting Administrator, Research and Special Programs Administration.*

[FR Doc. 97–32385 Filed 12–8–97; 9:40 am]

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**Federal Register**

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## FEDERAL REGISTER PAGES AND DATES, DECEMBER



## CFR PARTS AFFECTED DURING DECEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

## REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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**Research and Special Programs Administration**

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This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/nara/fedreg/fedreg.html.

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**H.R. 1493/P.L. 105–141**

To require the Attorney General to establish a program in local prisons to identify, prior to arraignment, criminal aliens and aliens who are unlawfully present in the United States, and for other purposes. (Dec. 5, 1997; 111 Stat. 2647)

**H.R. 2626/P.L. 105–142**

To make clarifications to the Pilot Records Improvement Act of 1996, and for other purposes. (Dec. 5, 1997; 111 Stat. 2650)

**Last List December 5, 1997**